

Calendar No. 1066

99TH CONGRESS
2D SESSION**H. R. 1868****[Report No. 99-520]**

To amend the Social Security Act to protect beneficiaries under the health care programs of that Act from unfit health care practitioners, and otherwise to improve the antifraud provisions of that Act.

IN THE SENATE OF THE UNITED STATES

JUNE 6 (legislative day, JUNE 3), 1985

Received; read twice and referred to the Committee on Finance

OCTOBER 2 (legislative day, SEPTEMBER 24), 1986

Reported by Mr. PACKWOOD, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in italic]

AN ACT

To amend the Social Security Act to protect beneficiaries under the health care programs of that Act from unfit health care practitioners, and otherwise to improve the antifraud provisions of that Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; REFERENCES IN ACT.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Medicare and Medicaid Patient and Program Protection Act
4 of 1985”.

5 (b) **AMENDMENTS TO THE SOCIAL SECURITY ACT.**—
6 Except as otherwise specifically provided, whenever in this
7 Act an amendment is expressed in terms of an amendment
8 to, or repeal of, a section or other provision, the reference
9 shall be considered to be made to a section or other provision
10 of the Social Security Act.

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11 **SEC. 2. EXCLUSION FROM MEDICARE AND STATE HEALTH**
12 **CARE PROGRAMS.**

13 Section 1128 (42 U.S.C. 1320a-7) is amended to read
14 as follows:

15 “**EXCLUSION OF CERTAIN INDIVIDUALS AND ENTITIES**
16 **FROM PARTICIPATION IN MEDICARE AND STATE**
17 **HEALTH CARE PROGRAMS**

18 “**SEC. 1128. (a) MANDATORY EXCLUSION.**—The Sec-
19 retary shall exclude the following individuals and entities

1 from participation in any program under title XVIII and
2 shall direct that the following individuals and entities be ex-
3 cluded from participation in any State health care program:

4 “(1) CONVICTION OF PROGRAM-RELATED
5 CRIMES.—Any individual or entity that has been con-
6 victed of a criminal offense related to the delivery of
7 an item or service under title XVIII or under any
8 State health care program (as defined in subsection
9 (h)).

10 “(2) CONVICTION RELATING TO PATIENT
11 ABUSE.—Any individual or entity that has been con-
12 victed, under Federal or State law, of a criminal of-
13 fense relating to neglect or abuse of patients in connec-
14 tion with the delivery of a health care item or service.

15 “(b) PERMISSIVE EXCLUSION.—The Secretary may ex-
16 clude the following individuals and entities from participation
17 in any program under title XVIII and may direct that the
18 following individuals and entities be excluded from participa-
19 tion in any State health care program:

20 “(1) CONVICTION RELATING TO FRAUD.—Any
21 individual or entity that has been convicted, under
22 Federal or State law, in connection with the delivery
23 of a health care item or service or with respect to any
24 act or omission in a program operated by or financed
25 in whole or in part by any Federal, State, or local gov-

1 ernment agency, of a criminal offense relating to fraud,
2 theft, embezzlement, breach of fiduciary responsibility,
3 or financial abuse.

4 “(2) CONVICTION RELATING TO OBSTRUCTION
5 OF AN INVESTIGATION.—Any individual or entity that
6 has been convicted, under Federal or State law, in
7 connection with the interference or obstruction of any
8 investigation into any criminal offense described in
9 paragraph (1) or in subsection (a).

10 “(3) CONVICTION RELATING TO CONTROLLED
11 SUBSTANCE.—Any individual or entity that has been
12 convicted, under Federal or State law, of unlawful
13 manufacture, distribution, prescription, or dispensing of
14 a controlled substance or other criminal offense relating
15 to a controlled substance.

16 “(4) LICENSE REVOCATION OR SUSPENSION.—
17 Any individual or entity—

18 “(A) whose license to provide health care
19 has been revoked or suspended by any State li-
20 censing authority, or who otherwise lost such a li-
21 cense, for reasons bearing on the individual’s or
22 entity’s professional competence, professional con-
23 duct, or financial integrity, or

24 “(B) who surrendered such a license while a
25 formal disciplinary proceeding was pending before

1 such an authority and the proceeding concerned
2 the individual's or entity's professional compe-
3 tence, professional conduct, or financial integrity.

4 “(5) EXCLUSION FROM FEDERAL HEALTH CARE
5 PROGRAM.—Any individual or entity which has been
6 suspended or excluded from participation, or otherwise
7 sanctioned, under any Federal program, including pro-
8 grams of the Department of Defense or the Veterans'
9 Administration, involving the provision of health care,
10 or under a State health care program (as defined in
11 subsection (h)).

12 “(6) CLAIMS FOR EXCESSIVE CHARGES OR UN-
13 NECESSARY SERVICES AND FAILURE OF CERTAIN OR-
14 GANIZATIONS TO FURNISH MEDICALLY NECESSARY
15 SERVICES.—Any individual or entity that the Secre-
16 tary determines—

17 “(A) has submitted or caused to be submitted
18 bills or requests for payment under title XVIII or
19 a State health care program containing charges
20 (or, in applicable cases, requests for payment of
21 costs) for items or services furnished substantially
22 in excess of such individual's or entity's custom-
23 ary charges (or, in applicable cases, substantially
24 in excess of such individual's or entity's costs) for
25 such items or services, unless the Secretary finds

1 there is good cause for such bills or requests con-
2 taining such charges or costs;

3 “(B) has furnished items or services to pa-
4 tients (whether or not eligible for benefits under
5 title XVIII or a State health care program) sub-
6 stantially in excess of the needs of such patients
7 or of a quality which fails to meet professionally
8 recognized standards of health care;

9 “(C) is—

10 “(i) a health maintenance organization
11 (as defined in section 1903(m)) providing
12 items and services under a State plan ap-
13 proved under title XIX, or

14 “(ii) an entity furnishing services under
15 a waiver approved under section 1915(b)(1),
16 and has failed substantially to provide medically
17 necessary items and services that are required
18 (under law or the contract with the State under
19 title XIX) to be provided to individuals covered
20 under that plan or waiver, if the failure has ad-
21 versely affected (or has a substantial likelihood of
22 adversely affecting) these individuals; or

23 “(D) is an entity providing items and serv-
24 ices as an eligible organization under a risk-shar-
25 ing contract under section 1876 and has failed

substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under the risk-sharing contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals.

~~“(7) FRAUD, KICKBACKS, AND OTHER PROHIBITED ACTIVITIES.—Any individual or entity that the Secretary determines has committed an act which is described in section 1128A or section 1128B.~~

~~“(8) ENTITIES CONTROLLED BY A SANCTIONED INDIVIDUAL.—Any entity with respect to which the Secretary determines that a person—~~

~~“(A)(i) with an ownership or control interest (as defined in section 1124(a)(3)) in that entity, or~~

~~“(ii) who is an officer, director, agent, or managing employee (as defined in section 1126(b)) of that entity—~~

~~is a person—~~

~~“(B)(i) who has been convicted of any offense described in subsection (a) or in paragraph (1), (2), or (3) of this subsection;~~

~~“(ii) against whom a civil monetary penalty has been assessed under section 1128A; or~~

1 “(iii) who has been excluded from participa-
2 tion under a program under title XVIII or under
3 a State health care program.

4 “(9) FAILURE TO DISCLOSE REQUIRED INFORMA-
5 TION.—Any entity that did not fully and accurately
6 make any disclosure required of it by section 1124 or
7 section 1126.

8 “(10) FAILURE TO SUPPLY REQUESTED INFOR-
9 MATION ON SUBCONTRACTORS AND SUPPLIERS.—Any
10 disclosing entity (as defined in section 1124(a)(2)) that
11 fails to supply (within such period as may be specified
12 by the Secretary in regulations) upon request specifi-
13 cally addressed to the entity by the Secretary—

14 “(A) full and complete information as to the
15 ownership of a subcontractor (as defined by the
16 Secretary in regulations) with whom the entity
17 has had, during the previous 12 months, business
18 transactions in an aggregate amount in excess of
19 \$25,000, or

20 “(B) full and complete information as to any
21 significant business transactions (as defined by the
22 Secretary in regulations), occurring during the
23 five-year period ending on the date of such re-
24 quest, between the entity and any wholly owned

1 supplier or between the entity and any subcon-
2 tractor.

3 “(11) ~~FAILURE TO SUPPLY PAYMENT INFORMA-~~
4 ~~TION.~~—Any individual or entity furnishing items or
5 services for which payment may be made under title
6 ~~XVIII~~ or a State health care program that fails to
7 provide such information as the Secretary or the ap-
8 propriate State agency finds necessary to determine
9 whether such payments are or were due and the
10 amounts thereof, or has refused to permit such exami-
11 nation of its records by or on behalf of the Secretary or
12 that agency as may be necessary to verify such infor-
13 mation.

14 “(12) ~~FAILURE TO GRANT IMMEDIATE~~
15 ~~ACCESS.~~—Any individual or entity that fails to grant
16 immediate access, upon reasonable request (as defined
17 by the Secretary in regulations) to any of the follow-
18 ing:

19 “(A) To the Secretary, or to the agency used
20 by the Secretary, for the purpose specified in the
21 first sentence of section 1864(a) (relating to com-
22 pliance with conditions of participation or pay-
23 ment).

24 “(B) To the Secretary or the State agency,
25 to perform the reviews and surveys required

1 under State plans under paragraphs (26), (31),
2 and (33) of section 1902(a) and under section
3 1903(g).

4 “(C) To the Inspector General of the De-
5 partment of Health and Human Services, for the
6 purpose of reviewing records, documents, and
7 other data necessary to the performance of the
8 statutory functions of the Inspector General.

9 “(D) To a State medicaid fraud control unit
10 (as defined in section 1903(q)), for the purpose of
11 conducting activities described in that section.

12 “(13) FAILURE TO TAKE CORRECTIVE
13 ACTION.—Any hospital that fails to comply substan-
14 tially with a corrective action required under section
15 1886(f)(2)(B).

16 Subject to subsection (d)(2), the Secretary shall exercise the
17 authority under this subsection in a manner that results in an
18 individual’s or entity’s exclusion from all the programs under
19 title XVIII and all the State health care programs in which
20 the individual or entity may otherwise participate.

21 “(e) NOTICE, EFFECTIVE DATE, AND PERIOD OF EX-
22 CLUSION.—(1) An exclusion under this section or under sec-
23 tion 1128A shall be effective at such time and upon such
24 reasonable notice to the public and to the individual or entity

1 excluded as may be specified in regulations consistent with
2 paragraph (2).

3 “(2)(A) Except as provided in subparagraph (B), such an
4 exclusion shall be effective with respect to services furnished
5 to an individual on or after the effective date of the exclusion.

6 “(B) Unless the Secretary determines that the health
7 and safety of individuals receiving services warrants the ex-
8 clusion taking effect earlier, an exclusion shall not apply to
9 payments made under title XVIII or under a State health
10 care program for—

11 “(i) inpatient institutional services furnished to an
12 individual who was admitted to such institution before
13 the date of the exclusion, or

14 “(ii) home health services and hospice care fur-
15 nished to an individual under a plan of care established
16 before the date of the exclusion,
17 until the passage of 30 days after the effective date of the
18 exclusion.

19 “(3)(A) The Secretary shall specify, in the notice of ex-
20 clusion under paragraph (1) and the written notice under sec-
21 tion 1128A, the minimum period (or, in the case of an exclu-
22 sion under subsection (b)(12), the period) of the exclusion.

23 “(B) In the case of an exclusion under subsection (a)(1),
24 the minimum period of the exclusion may not be less than
25 five years.

1 “(C) In the case of an exclusion under subsection
2 (b)(12), the period of the exclusion shall be equal to the sum
3 of—

4 “(i) the length of the period in which the individ-
5 ual or entity failed to grant the immediate access de-
6 scribed in that subsection, and

7 “(ii) an additional period, not to exceed 90 days,
8 set by the Secretary.

9 “(d) NOTICE TO STATE AGENCIES AND EXCLUSION
10 UNDER STATE HEALTH CARE PROGRAMS.—(1) The Secere-
11 tary shall promptly notify each appropriate State agency ad-
12 ministering or supervising the administration of each State
13 health care program (and, in the case of an exclusion effected
14 pursuant to subsection (a) and to which section 304(a)(5) of
15 the Controlled Substances Act may apply, the Attorney Gen-
16 eral)—

17 “(A) of the fact and circumstances of each exclu-
18 sion effected against an individual or entity under this
19 section or section 1128A, and

20 “(B) the period (described in paragraph (2)) for
21 which the State agency is directed to exclude the indi-
22 vidual or entity from participation in the State health
23 care program.

24 “(2)(A) Except as provided in subparagraph (B), the
25 period of the exclusion under a State health care program

1 under paragraph (1) shall be the same as any period of exclu-
 2 sion under a program under title XVIII.

3 “(B) The Secretary may waive an individual’s or enti-
 4 ty’s exclusion under a State health care program under para-
 5 graph (1) if the Secretary receives and approves a request for
 6 the waiver with respect to the individual or entity from the
 7 State agency administering or supervising the administration
 8 of the program.

9 “(e) NOTICE TO STATE LICENSING AGENCIES.—The
 10 Secretary shall—

11 “(1) promptly notify the appropriate State or local
 12 agency or authority, having responsibility for the li-
 13 censing or certification of an individual or entity ex-
 14 cluded (or directed to be excluded) from participation
 15 under this section or section 1128A, of the fact and
 16 circumstances of the exclusion,

17 “(2) request that appropriate investigations be
 18 made and sanctions invoked in accordance with appli-
 19 cable State law and policy, and

20 “(3) request that the State or local agency or au-
 21 thority keep the Secretary and the Inspector General
 22 in the Department of Health and Human Services fully
 23 and currently informed with respect to any actions
 24 taken in response to the request.

1 “(f) NOTICE, HEARING, AND JUDICIAL REVIEW.—(1)

2 Any individual or entity that is excluded (or directed to be
3 excluded) from participation under this section (or is denied
4 termination of the exclusion under subsection (g)) is entitled
5 to reasonable notice and opportunity for a hearing thereon by
6 the Secretary to the same extent as is provided in section
7 205(b), and to judicial review of the Secretary’s final decision
8 after such hearing as is provided in section 205(g).

9 “(2) The provisions of section 205(h) shall apply with
10 respect to this section and sections 1128A and 1156 to the
11 same extent as it is applicable with respect to title II.

12 “(g) APPLICATION FOR TERMINATION OF EXCLU-
13 SION.—(1) An individual or entity excluded (or directed to be
14 excluded) from participation under this section (other than
15 under subsection (b)(12)) or section 1128A may apply to the
16 Secretary, in the manner specified by the Secretary in regu-
17 lations and at the end of the minimum period of exclusion
18 provided under subsection (e)(3) and at such other times as
19 the Secretary may provide, for termination of the exclusion
20 effected under this section or section 1128A.

21 “(2) The Secretary may terminate the exclusion if the
22 Secretary determines, on the basis of the conduct of the ap-
23 plicant which occurred after the date of the notice of exclu-
24 sion or which was unknown to the Secretary at the time of
25 the exclusion, that—

1 “(A) there is no basis under subsection (a) or (b)
2 or section 1128A(a) for a continuation of the exclusion,
3 and

4 “(B) there are reasonable assurances that the
5 types of actions which formed the basis for the original
6 exclusion have not recurred and will not recur.

7 “(3) The Secretary shall promptly notify each appropri-
8 ate State agency administering or supervising the administra-
9 tion of each State health care program (and, in the case of an
10 exclusion effected pursuant to subsection (a) and to which
11 section 304(a)(5) of the Controlled Substances Act may
12 apply, the Attorney General) of the fact and circumstances of
13 each termination of exclusion made under this subsection.

14 “(h) DEFINITION OF STATE HEALTH CARE PRO-
15 GRAM.—For purposes of this section and sections 1128A and
16 1128B, the term ‘State health care program’ means—

17 “(1) a State plan approved under title XIX,

18 “(2) any program receiving funds under title V or
19 from an allotment to a State under such title, or

20 “(3) any program receiving funds under title XX
21 or from an allotment to a State under such title.”.

22 **SEC. 3. CIVIL MONETARY PENALTIES.**

23 (a) **GROUND FOR IMPOSITION.**—(1) Subsection (a)(1)
24 of section 1128A (42 U.S.C. 1320a-7a) is amended by strik-
25 ing out “the Secretary determines” and all that follows

1 through “; or” and inserting in lieu thereof “the Secretary
2 determines—

3 “(A) is for a medical or other item or service that
4 the person knows or has reason to know was not pro-
5 vided as claimed;

6 “(B) is for a medical or other item or service and
7 the person knows or has reason to know the claim is
8 false or fraudulent;

9 “(C) is presented for a physician’s service (or an
10 item or service incident to a physician’s service) by a
11 person who knows or has reason to know that the indi-
12 vidual who furnished (or supervised the furnishing of)
13 the service—

14 “(i) was not licensed as a physician;

15 “(ii) was licensed as a physician, but such li-
16 cense had been obtained through a misrepresenta-
17 tion of material fact (including cheating on an ex-
18 amination required for licensing); or

19 “(iii) represented to the patient at the time
20 the service was furnished that the physician was
21 certified in a medical specialty by a medical spe-
22 cialty board when the individual was not so certi-
23 fied; or

24 “(D) is for a medical or other item or service fur-
25 nished during a period in which the person was ex-

1 cluded under the program under which the claim was
 2 made pursuant to a determination by the Secretary
 3 under this section or under section 1128, 1156,
 4 1160(b) (as in effect on September 2, 1982), 1862(d)
 5 (as in effect on the date of the enactment of the Medi-
 6 care and Medicaid Patient and Program Protection Act
 7 of 1985), or 1866(b); or”.

8 (2) Subsection (a)(2)(B) of such section is amended by
 9 inserting “(or other requirement of a State plan under title
 10 ~~XIX~~)” after “State agency”.

11 (3) Subsection (a) of such section is further amended by
 12 adding at the end thereof the following new sentence: “In
 13 addition the Secretary may make a determination in the same
 14 proceeding to exclude the person from participation in the
 15 programs under title ~~XVIII~~ and to direct the appropriate
 16 State agency to exclude the person from participation in any
 17 State health care program.”.

18 (4) No civil penalty or assessment may be imposed
 19 under section 1128A(a) of the Social Security Act in the case
 20 of a claim filed before August 13, 1981, if liability for the
 21 amount of the penalty or assessment could not have been
 22 imposed with respect to the claim under section 3729 of title
 23 31, United States Code (relating to false claims).

24 (b) ~~STATUTE OF LIMITATION ON ACTIONS.~~—Subsec-
 25 tion (b)(1) of such section is amended by adding at the end

1 the following new sentences: “The Secretary may not initiate
 2 an action under this section with respect to any claim later
 3 than six years after the date the claim was presented. The
 4 Secretary may initiate an action under this section by person-
 5 al service or by mailing, by registered or certified mail, the
 6 notice required by paragraph (2).”

7 (c) CONFORMING AMENDMENT.—Subsections (b), (c),
 8 (f), and (g) of such section are each amended by striking out
 9 “penalty or assessment” and inserting in lieu thereof “penal-
 10 ty, assessment, or exclusion” each place it appears.

11 (d) PRO-RATED PAYMENT OF RECOVERIES TO STATE
 12 AGENCIES.—Subsection (c)(1)(A) of such section is amended
 13 by striking out “equal to the State’s share of the amount paid
 14 by the State agency” and inserting in lieu thereof “bearing
 15 the same proportion to the total amount recovered as the
 16 State’s share of the amount paid by the State agency for such
 17 claim bears to the total amount paid”.

18 (e) NOTICE TO STATE AGENCIES.—Subsection (g) of
 19 such section is further amended by inserting “the appropriate
 20 State agency or agencies administering or supervising the ad-
 21 ministration of State health care programs (as defined in sec-
 22 tion 1128(h)),” after “professional organization,”.

23 (f) APPLICATION OF SUBPOENA POWER AND INJUNC-
 24 TIVE POWERS.—Such section is further amended by adding
 25 at the end the following new subsections:

1 “(i) The provisions of subsections (d) and (e) of section
2 205 shall apply with respect to this section to the same
3 extent as they are applicable with respect to title II.

4 “(j) Whenever the Secretary has reason to believe that
5 any person has engaged, is engaging, or is about to engage in
6 any activity which makes the person subject to a civil mone-
7 tary penalty under this section, the Secretary may bring an
8 action in an appropriate district court of the United States
9 (or, if applicable, a United States court of any territory) to
10 enjoin such activity, or to enjoin the person from concealing,
11 removing, or encumbering assets which may be required in
12 order to pay a civil monetary penalty if any such penalty
13 were to be imposed or to seek other appropriate relief.”.

14 **SEC. 4. CRIMINAL PENALTIES FOR ACTS INVOLVING MEDI-**
15 **CARE AND STATE HEALTH CARE PROGRAMS.**

16 (a) **TECHNICAL AMENDMENTS.**—Section 1909 (42
17 U.S.C. 1396h) is amended—

18 (1) by amending the heading to read as follows:

19 “**CRIMINAL PENALTIES FOR ACTS INVOLVING MEDICARE**
20 **OR STATE HEALTH CARE PROGRAMS**”;

21 (2) in subsection (a)(1), by striking out “a State
22 plan approved under this title” and inserting in lieu
23 thereof “a program under title XVIII or a State health
24 care program (as defined in section 1128(h))”;

1 (3) in the matter in subsection (a) following para-
 2 graph (4), by striking out "this title" the first place it
 3 appears and inserting in lieu thereof "the program";

4 (4) in the last sentence of subsection (a), by strik-
 5 ing out "this title" the first place it appears and insert-
 6 ing in lieu thereof "title XIX", and by striking out
 7 "this title" the second place it appears and inserting in
 8 lieu thereof "that title";

9 (5) in paragraphs (1)(A), (1)(B), (2)(A), (2)(B), and
 10 (3)(A) of subsection (b), by striking out "this title" and
 11 inserting in lieu thereof "title XVIII or a State health
 12 care program" each place it appears;

13 (6) in subsection (c), by striking out "or home
 14 health agency (as those terms are employed in this
 15 title)" and inserting in lieu thereof "home health
 16 agency, or other entity for which certification is re-
 17 quired under title XVIII or a State health care pro-
 18 gram"; and

19 (7) in subsection (d), by striking out "this title"
 20 and inserting in lieu thereof "title XIX" each place it
 21 appears.

22 (b) CRIMINAL PENALTIES FOR PHYSICIAN MISREPRE-
 23 SENTATIONS.—Subsection (a) of such section is further
 24 amended—

1 (1) by striking out “or” at the end of paragraph

2 (3),

3 (2) by inserting “or” at the end of paragraph (4),

4 and

5 (3) by inserting after paragraph (4) the following

6 new paragraph:

7 “(5) presents or causes to be presented a claim
8 for a physician’s service for which payment may be
9 made under a program under title XVIII or a State
10 health care program and knows that the individual who
11 furnished the service either—

12 “(A) was not licensed as a physician, or

13 “(B) was licensed as a physician, but such li-
14 cense had been obtained through a misrepresenta-
15 tion of material fact (including cheating on an ex-
16 amination required for licensing),”.

17 (e) ~~REDESIGNATION OF SECTION 1877(d) AS SECTION~~
18 ~~1128B(e).~~—Subsection (d) of section 1877 (42 U.S.C.
19 ~~1395nn~~) is redesignated as subsection (e) and is transferred
20 and inserted in section 1909 at the end thereof.

21 (d) ~~REDESIGNATION OF SECTION 1909 AS SECTION~~
22 ~~1128B.~~—Section 1909, as amended by subsections (a), (b),
23 and (c) of this section, is redesignated as section 1128B and
24 is transferred to title XI and inserted immediately after sec-
25 tion 1128A.

1 (e) ~~REPEAL.~~—Section 1877 (other than subsection (d)
2 thereof which was transferred under subsection (e) of this
3 section) is repealed.

4 **SEC. 5. INFORMATION CONCERNING SANCTIONS TAKEN BY**
5 **STATE LICENSING AUTHORITIES AGAINST**
6 **HEALTH CARE PRACTITIONERS AND PROVID-**
7 **ERS.**

8 (a) ~~MEDICAID PLAN REQUIREMENT.~~—Section 1902(a)
9 (~~42 U.S.C. 1396a(a)~~) is amended—

10 (1) by striking out “and” at the end of paragraph
11 (45),

12 (2) by striking out the period at the end of para-
13 graph (46) and inserting in lieu thereof “; and”, and

14 (3) by inserting after paragraph (46) the following
15 new paragraph:

16 “(47) provide that the State will provide informa-
17 tion and access to certain information respecting sanc-
18 tions taken against health care practitioners and pro-
19 viders by State licensing authorities in accordance with
20 section 1919.”.

21 (b) ~~INFORMATION REQUIRED.~~—Title XIX is amended
22 by adding at the end the following new section:

1 “INFORMATION CONCERNING SANCTIONS TAKEN BY STATE
2 LICENSING AUTHORITIES AGAINST HEALTH CARE
3 PRACTITIONERS AND PROVIDERS

4 “SEC. 1919. (a) INFORMATION REPORTING REQUIRE-
5 MENT.—The requirement referred to in section 1902(a)(47)
6 is that the State must provide for the following:

7 “(1) INFORMATION REPORTING SYSTEM.—The
8 State must have in effect a system of reporting the fol-
9 lowing information with respect to formal proceedings
10 (as defined by the Secretary in regulations) concluded
11 against a health care practitioner or entity by any au-
12 thority of the State (or of a political subdivision there-
13 of) responsible for the licensing of health care practi-
14 tioners or entities:

15 “(A) Any adverse action taken by such li-
16 censing authority as a result of the proceeding, in-
17 cluding any revocation or suspension of a license
18 (and the length of any such suspension), repri-
19 mand, censure, or probation.

20 “(B) Any dismissal or closure of the proceed-
21 ings by reason of the practitioner or entity surren-
22 dering the license or leaving the State or jurisdic-
23 tion.

1 “(C) Any other loss of the license of the
2 practitioner or entity, whether by operation of
3 law, voluntary surrender, or otherwise.

4 “(2) ACCESS TO DOCUMENTS.—The State must
5 provide the Secretary (or an entity designated by the
6 Secretary) with access to such documents of the au-
7 thority described in paragraph (1) as may be necessary
8 for the Secretary to determine the facts and circum-
9 stances concerning the actions and determinations de-
10 scribed in such paragraph for the purpose of carrying
11 out this Act.

12 “(b) FORM OF INFORMATION.—The information de-
13 scribed in subsection (a)(1) shall be provided to the Secretary
14 (or, under suitable arrangements made by the Secretary, to
15 another entity) in such a form and manner as the Secretary
16 determines to be appropriate in order to provide for activities
17 of the Secretary under this Act and in order to provide, di-
18 rectly or through suitable arrangements made by the Secre-
19 tary, information—

20 “(1) to licensing authorities described in subsec-
21 tion (a)(1),

22 “(2) to State agencies administering or supervis-
23 ing the administration of State health care programs
24 (as defined in section 1128(h)),

1 “(3) to utilization and quality control peer review
2 organizations described in part B of title XI, and

3 “(4) to State medicaid fraud control units (as de-
4 fined in section 1903(q)),

5 in order for such authorities to determine the fitness of indi-
6 viduals to provide health care services, to protect the health
7 and safety of individuals receiving health care through such
8 programs, and to protect the fiscal integrity of such pro-
9 grams.

10 “(c) CONFIDENTIALITY OF INFORMATION PROVID-
11 ED.—The Secretary shall provide for suitable safeguards for
12 the confidentiality of such of the information furnished under
13 subsection (a) as is not otherwise available to the public.”

14 **SEC. 6. OBLIGATION OF HEALTH CARE PRACTITIONERS AND**
15 **PROVIDERS.**

16 Section 1156 (42 U.S.C. 1320c-5) is amended—

17 (1) by striking out “title XVIII” and “such title”
18 in subsection (a) and inserting in lieu thereof “this
19 Act” in each instance, and

20 (2) by striking out “title XVIII” in subsection (b)
21 and inserting in lieu thereof “this Act” each place it
22 appears.

23 **SEC. 7. EXCLUSION UNDER THE MEDICAID PROGRAM.**

24 Section 1902 (42 U.S.C. 1396b) is amended by insert-
25 ing after subsection (f) the following new subsection:

1 “(g)(1) In addition to any other authority, a State may
 2 exclude any individual or entity for purposes of participating
 3 under the State plan under this title for any reason for which
 4 the Secretary could exclude the individual or entity from par-
 5 ticipation in a program under title XVIII under section
 6 1128, 1128A, or 1866(b)(2).

7 “(2) In order for a State to receive payments for medi-
 8 cal assistance under section 1903(a), with respect to pay-
 9 ments the State makes to a health maintenance organization
 10 (as defined in section 1903(m)) or to an entity furnishing
 11 services under a waiver approved under section 1915(b)(1),
 12 the State must provide that it will exclude from participation,
 13 as such an organization or entity, any organization or entity
 14 that—

15 “(A) could be excluded under section 1128(b)(8)
 16 (relating to owners and managing employees who have
 17 been convicted of certain crimes or received other
 18 sanctions), or

19 “(B) has, directly or indirectly, a substantial con-
 20 tractual relationship (as defined by the Secretary) with
 21 an individual or entity that is described in section
 22 1128(b)(8)(B).

23 “(3) As used in this subsection, the term ‘exclude’ in-
 24 cludes the refusal to enter into or renew a participation
 25 agreement or the termination of such an agreement.”.

1 SEC. 8. MISCELLANEOUS AND CONFORMING AMENDMENTS.

2 (a) MATERNAL AND CHILD HEALTH PROGRAM.—See
3 tion 504(b) (42 U.S.C. 704(b)) is amended—

4 (1) by striking out “or” at the end of paragraph
5 (4),

6 (2) by striking out the period at the end of para-
7 graph (5) and inserting in lieu thereof “; or”, and

8 (3) by adding at the end thereof the following new
9 paragraph:

10 “(6) payment for any item or service furnished by
11 an individual or entity excluded from participation in
12 the program under this title pursuant to section 1128
13 or section 1128A.”.

14 (b) DISCLOSURE REQUIREMENTS.—(1) Subsection (a)
15 of section 1126 (42 U.S.C. 1320a-5) is amended—

16 (A) in the first sentence, by striking out “or other
17 institution” and all that follows through the period at
18 the end and inserting in lieu thereof “or other entity
19 (other than an individual practitioner or group of prac-
20 titioners) shall be required to disclose to the Secretary
21 or to the appropriate State agency the name of any
22 person that is a person described in subparagraphs (A)
23 and (B) of section 1128(b)(8).”, and

24 (B) in the second sentence, by striking out “insti-
25 tution, organization, or agency” and inserting in lieu
26 thereof “entity”.

1 (2) Subsection (b) of such section is amended by striking
2 out “institution, organization, or agency” and inserting in
3 lieu thereof “entity” each place it appears.

4 (c) MEDICARE PAYMENTS.—(1) Section 1862 (42
5 U.S.C. 1395y) is amended—

6 (A) by striking out subsection (d), and

7 (B) by amending subsection (e) to read as follows:

8 “(e) No payment may be made under this title with re-
9 spect to any item or service furnished by an individual or
10 entity during any period when the individual or entity is ex-
11 cluded from participation in a program under this title pursu-
12 ant to section 1128 or section 1128A.”.

13 (2) Section 1842(j) (42 U.S.C. 1395u(j)) is amended—

14 (A) in paragraph (2)—

15 (i) by amending subparagraph (A) to read as
16 follows:

17 “(A) excluding a physician from participation in
18 the programs under this title for a period not to exceed
19 5 years, in accordance with the procedures of subsec-
20 tions (e), (f), and (g) of section 1128, or”, and

21 (ii) by striking out “barred from participation
22 in the program” in the second sentence and in-
23 serting in lieu thereof “excluded from participa-
24 tion in the programs”; and

1 (B) by striking out “bar” in paragraph (3)(A) and
 2 inserting in lieu thereof “exclude”.

3 (3) Section 1862(h)(4) (42 U.S.C. 1395y(h)(4)) is
 4 amended by striking out “paragraphs (2) and (3) of subsection
 5 1862(d)” and inserting in lieu thereof “subsections (e), (f),
 6 and (g) of section 1128”.

7 (4) Paragraph (3) of section 1886(f) (42 U.S.C.
 8 1395ww(f)) is amended to read as follows:

9 “(3) The provisions of subsections (e) through (g) of sec-
 10 tion 1128 shall apply to determinations made under para-
 11 graph (2) in the same manner as they apply to exclusions
 12 effected under section 1128(b)(13).”.

13 (d) **TERMINATION OF PROVIDER AGREEMENTS UNDER**
 14 **MEDICARE.**—Section 1866 (42 U.S.C. 1395cc) is amend-
 15 ed—

16 (1) by striking out paragraph (3) of subsection (a);

17 (2) by amending subsection (b) to read as follows:

18 “(b)(1) A provider of services may terminate an agree-
 19 ment with the Secretary under this section at such time and
 20 upon such notice to the Secretary and the public as may be
 21 provided in regulations, except that notice of more than six
 22 months shall not be required.

23 “(2) The Secretary may refuse to enter into an agree-
 24 ment under this section or, upon such reasonable notice to
 25 the provider and the public as may be specified in regula-

1 tions, may refuse to renew or may terminate such an agree-
2 ment after the Secretary—

3 “(A) has determined that the provider fails to
4 comply substantially with the provisions of the agree-
5 ment, with the provisions of this title and regulations
6 thereunder, or with a corrective action required under
7 section 1886(f)(2)(B),

8 “(B) has determined that the provider fails sub-
9 stantially to meet the applicable provisions of section
10 1861, or

11 “(C) has excluded the provider from participation
12 in a program under this title pursuant to section 1128
13 or section 1128A.

14 “(3) A termination of an agreement or a refusal to
15 renew an agreement under this subsection shall be effective
16 on the same date, and with respect to the same items and
17 services, as an exclusion from participation under the pro-
18 grams under this title would become effective under section
19 1128(e).”;

20 (3) in paragraphs (1) and (3) of subsection (e), by
21 striking out “an agreement filed under this title by a
22 provider of services has been terminated by the Secre-
23 tary” and inserting in lieu thereof “the Secretary has
24 terminated or has refused to renew an agreement
25 under this title with a provider of services”;

(4) by inserting “or nonrenewal” in subsection (e) after “termination” each place it appears; and

(5) by adding at the end the following new subsection:

“(g)(1) Except as provided in paragraph (2), an institution or agency dissatisfied with a determination by the Secretary that it is not a provider of services or with a determination described in subsection (b)(2) shall be entitled to a hearing thereon by the Secretary (after reasonable notice) to the same extent as is provided in section 205(b), and to judicial review of the Secretary’s final decision after such hearing as is provided in section 205(g).”

“(2) An institution or agency is not entitled to separate notice and opportunity for a hearing under both section 1128 and this section with respect to a determination or determinations based on the same underlying facts and issues.”

(e) CONFORMING AMENDMENT.—Section 1869 (42 U.S.C. 1395ff) is amended by striking out subsection (e).

(f) MEDICAID PLAN REVISIONS.—Section 1902(a) (42 U.S.C. 1396b(a)) is amended—

(1) in paragraph (23), by inserting “subsection (g) and in” after “except as provided in”,

(2) in paragraph (38), by striking out “respectively, (A)” and all that follows up to the semicolon at the

1 end and inserting in lieu thereof “the information de-
2 scribed in section 1128(b)(9)”, and

3 (3) in paragraph (39)—

4 (A) by striking out “bar” and inserting in
5 lieu thereof “exclude”,

6 (B) by striking out “person” and inserting in
7 lieu thereof “individual or entity” each place it
8 appears, and

9 (C) by inserting “or section 1128A” after
10 “section 1128”.

11 (g) ~~DENIAL OF FEDERAL FINANCIAL PARTICIPATION~~
12 ~~UNDER MEDICAID.~~—Paragraph (2) of section 1903(i) (42
13 U.S.C. 1396b(i)) is amended to read as follows:

14 “(2) with respect to any amount expended for
15 items or services furnished under the plan by any indi-
16 vidual or entity during any period when the individual
17 or entity is excluded from participation in the State
18 plan under this title pursuant to section 1128 or sec-
19 tion 1128A; or”.

20 (h) ~~OTHER MEDICAID CONFORMING AMENDMENTS.~~—

21 (1) Subsection (n) of section 1903 (42 U.S.C. 1396b) is re-
22 pealed.

23 (2) Paragraph (2) of section 1915(a) (42 U.S.C.
24 1396n(a)) is amended to read as follows:

“(2) restricts for a reasonable period of time the provider or providers from which an individual (eligible for medical assistance for items or services under the State plan) can receive such items or services, if—

“(A) the State has found, after notice and opportunity for a hearing (in accordance with procedures established by the State), that the individual has utilized such items or services at a frequency or amount not medically necessary (as determined in accordance with utilization guidelines established by the State), and

“(B) under such restriction, individuals eligible for medical assistance for such services have reasonable access (taking into account geographic location and reasonable travel time) to such services of adequate quality.”.

(i) TITLE XX.—Section 2005(a) (42 U.S.C. 1397d(a)) is amended—

(1) by striking out “or” at the end of paragraph (7),

(2) by striking out the period at the end of paragraph (8) and inserting in lieu thereof “; or”, and

(3) by adding at the end thereof the following new paragraph:

1 “(9) for payment for any item or service furnished
2 by a person excluded from participation in the program
3 under this title pursuant to section 1128 or section
4 1128A.”.

(j) DENIAL, REVOCATION, OR SUSPENSION OF REGISTRATION TO MANUFACTURE, DISTRIBUTE, OR DISPENSE A CONTROLLED SUBSTANCE FOR ENTITIES EXCLUDED FROM THE MEDICARE PROGRAM.—Section 304(a) of the Controlled Substances Act (21 U.S.C. 824(a)) is amended—

10 (1) by striking out “or” at the end of paragraph
11 ~~(3)~~,

(2) by striking out the period at the end of paragraph (4) and inserting in lieu thereof “; or”, and

14 (3) by inserting after paragraph (4) the following
15 new paragraph:

16 “(5) has been excluded (or directed to be ex-
17 cluded) from participation in a program pursuant to
18 section 1128(a) of the Social Security Act.”.

19 SEC. 9. CLARIFICATION OF MEDICAID MORATORIUM PROVI-
20 SIONS OF DEFICIT REDUCTION ACT OF 1984.

Section 2373(e) of the Deficit Reduction Act of 1984
(Public Law 98-369; 98 Stat. 1112) is amended—

23 ~~(1) in paragraph (1)—~~

24 (A) by inserting “(whether or not approved)”
25 after “such State’s plan”;

(B) by inserting “(including any part of the plan operating pursuant to section 1902(f) of that Act), or the operation thereunder,” after “Social Security Act”, and

(C) by inserting “(or its operation’s)” after “such plan’s”; and

(2) by adding at the end the following new paragraph:

“(5) In this subsection, a State plan is considered to include any amendment or other change in the plan which is submitted by a State, or for which the Secretary otherwise has notice, whether before or after the date of enactment of the Deficit Reduction Act of 1984 and whether or not the amendment or change was approved, disapproved, acted upon, or not acted upon by the Secretary.”.

SEC. 10. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsections (b), (c), (d), and (e), the amendments made by this Act shall become effective at the end of the fourteen-day period beginning on the date of the enactment of this Act and shall not apply to administrative proceedings commenced before the end of such period.

(b) MANDATORY MINIMUM EXCLUSIONS APPLY PROSPECTIVELY.—Section 1128(c)(3)(B) of the Social Security Act (as amended by this Act), which requires an exclusion of

1 not less than five years in the case of certain exclusions; shall
2 not apply to exclusions based on convictions occurring before
3 the date of the enactment of this Act.

4 (c) EFFECTIVE DATE FOR CHANGES IN MEDICAID
5 LAW.—(1) The amendments made by sections 5 and 8(f)
6 apply (except as provided under paragraph (2)) to payments
7 under title XIX of the Social Security Act for calendar quar-
8 ters beginning more than thirty days after the date of the
9 enactment of this Act.

10 (2) In the case of a State plan for medical assistance
11 under title XIX of the Social Security Act which the Secre-
12 tary of Health and Human Services determines requires
13 State legislation in order for the plan to meet the additional
14 requirements imposed by the amendments made by this Act,
15 the State plan shall not be regarded as failing to comply with
16 the requirements of such title solely on the basis of its failure
17 to meet these additional requirements before the first day of
18 the first calendar quarter beginning after the close of the first
19 regular session of the State legislature that begins after the
20 date of the enactment of this Act.

21 (3) Subsection (j) of section 1128A of the Social Securi-
22 ty Act (as added by section 3(f) of this Act) takes effect on
23 the date of the enactment of this Act.

24 (d) PHYSICIAN MISREPRESENTATIONS.—Clauses (ii)
25 and (iii) of section 1128A(a)(1)(C) of the Social Security Act,

1 as amended by section 3(a)(1)(F) of this Act, and subpara-
 2 graph (B) of section 1128B(a)(5) of the Social Security Act,
 3 as amended by section 4(b)(3) of this Act, apply to claims
 4 presented for services performed on or after the effective date
 5 specified in subsection (a), without regard to the date the
 6 misrepresentation of fact was made.

7 (e) CLARIFICATION OF MEDICAID MORATORIUM.—

8 The amendments made by section 9 apply as though they
 9 were originally included in the enactment of section 2373(e)
 10 of the Deficit Reduction Act of 1984.

11 (f) TREATMENT OF CERTAIN DENIALS OF PAY-

12 MENT.—For purposes of section 1128(b)(8)(B)(iii) of the
 13 Social Security Act (as amended by section 2 of this Act), a
 14 person shall be considered to have been excluded from par-
 15 ticipation under a program under title XVIII if payment to
 16 the person has been denied under section 1862(d) of the
 17 Social Security Act, as in effect before the effective date
 18 specified in subsection (a).

19 SECTION 1. SHORT TITLE; REFERENCES IN ACT.

20 (a) SHORT TITLE.—*This Act may be cited as the*
 21 *“Medicare and Medicaid Patient and Program Protection*
 22 *Act of 1986”.*

23 (b) AMENDMENTS TO THE SOCIAL SECURITY ACT.—

24 *Except as otherwise specifically provided, whenever in this*
 25 *Act an amendment is expressed in terms of an amendment to,*

1 *or repeal of, a section or other provision, the reference shall be*
 2 *considered to be made to a section or other provision of the*
 3 *Social Security Act.*

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TITLE I—FRAUD AND ABUSE

SEC. 101. EXCLUSION FROM MEDICARE AND STATE HEALTH CARE PROGRAMS.

Section 1128 (42 U.S.C. 1320a-7) is amended to read as follows:

“EXCLUSION OF CERTAIN INDIVIDUALS AND ENTITIES FROM PARTICIPATION IN MEDICARE AND STATE HEALTH CARE PROGRAMS

“SEC. 1128. (a) MANDATORY EXCLUSION.—*The Secretary shall exclude the following individuals and entities from participation in any program under title XVIII and shall direct that the following individuals and entities be excluded from participation in any State health care program (as defined in subsection (h)):*

“(1) CONVICTION OF PROGRAM-RELATED CRIMES.—*Any individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under title XVIII or under any State health care program.*

“(2) CONVICTION RELATING TO PATIENT ABUSE.—*Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.*

“(b) PERMISSIVE EXCLUSION.—*The Secretary may exclude the following individuals and entities from participa-*

1 *tion in any program under title XVIII and may direct that*
2 *the following individuals and entities be excluded from par-*
3 *ticipation in any State health care program:*

4 “(1) *CONVICTION RELATING TO FRAUD.—Any*
5 *individual or entity that has been convicted, under*
6 *Federal or State law, in connection with the delivery*
7 *of a health care item or service or with respect to any*
8 *act or omission in a program operated by or financed*
9 *in whole or in part by any Federal, State, or local*
10 *government agency, of a criminal offense relating to*
11 *fraud, theft, embezzlement, breach of fiduciary respon-*
12 *sibility, or other financial misconduct.*

13 “(2) *CONVICTION RELATING TO OBSTRUCTION*
14 *OF AN INVESTIGATION.—Any individual or entity*
15 *that has been convicted, under Federal or State law, in*
16 *connection with the interference or obstruction of any*
17 *investigation into any criminal offense described in*
18 *paragraph (1) or in subsection (a).*

19 “(3) *FELONY CONVICTION RELATING TO CON-*
20 *TROLLED SUBSTANCE.—Any individual or entity that*
21 *has been convicted, under Federal or State law, of a*
22 *felony for the unlawful manufacture, distribution, pre-*
23 *scription, or dispensing of a controlled substance.*

24 “(4) *LICENSE REVOCATION OR SUSPENSION.—*
25 *Any individual or entity—*

1 “(A) whose license to provide health care has
2 been revoked or suspended by any State licensing
3 authority, or who otherwise lost such a license, for
4 reasons bearing on the individual’s or entity’s
5 professional competence, professional performance,
6 or financial integrity, or

7 “(B) who surrendered such a license while a
8 formal disciplinary proceeding was pending before
9 such an authority and the proceeding concerned
10 the individual’s or entity’s professional compe-
11 tence, professional performance, or financial
12 integrity.

13 “(5) *EXCLUSION OR SUSPENSION UNDER FED-*
14 *ERAL OR STATE HEALTH CARE PROGRAM.*—Any in-
15 dividual or entity which has been suspended or ex-
16 cluded from participation, or otherwise sanctioned,
17 under—

18 “(A) any Federal program, including pro-
19 grams of the Department of Defense or the Veter-
20 ans’ Administration, involving the provision of
21 health care, or

22 “(B) a State health care program (as defined
23 in subsection (h)),

1 for reasons bearing on the individual's or entity's pro-
2 fessional competence, professional performance, or fi-
3 nancial integrity.

4 “(6) *CLAIMS FOR EXCESSIVE CHARGES OR UN-*
5 *NECESSARY SERVICES AND FAILURE OF CERTAIN*
6 *ORGANIZATIONS TO FURNISH MEDICALLY NECES-*
7 *SARY SERVICES.*—Any individual or entity that the
8 Secretary determines—

9 “(A) has submitted or caused to be submitted
10 bills or requests for payment (where such bills or
11 requests are based on charges or cost) under title
12 XVIII or a State health care program containing
13 charges (or, in applicable cases, requests for pay-
14 ment of costs) for items or services furnished sub-
15 stantially in excess of such individual's or enti-
16 ty's usual charges (or, in applicable cases, sub-
17 stantially in excess of such individual's or enti-
18 ty's costs) for such items or services, unless the
19 Secretary finds there is good cause for such bills
20 or requests containing such charges or costs;

21 “(B) has caused items or services to be fur-
22 nished to patients eligible for benefits under title
23 XVIII or a State health care program substan-
24 tially in excess of the needs of such patients or of

1 *a quality which fails to meet professionally recog-*
2 *nized standards of health care;*

3 “(C) is—

4 “(i) *a health maintenance organization*
5 *(as defined in section 1903(m)) providing*
6 *items and services under a State plan ap-*
7 *proved under title XIX, or*

8 “(ii) *an entity furnishing services under*
9 *a waiver approved under section 1915(b)(1),*
10 *and has failed substantially to provide medically*
11 *necessary items and services that are required*
12 *(under law or the contract with the State under*
13 *title XIX) to be provided to individuals covered*
14 *under that plan or waiver, if the failure has ad-*
15 *versely affected (or has a substantial likelihood of*
16 *adversely affecting) these individuals; or*

17 “(D) *is an entity providing items and serv-*
18 *ices as an eligible organization under a risk-shar-*
19 *ing contract under section 1876 and has failed*
20 *substantially to provide medically necessary items*
21 *and services that are required (under law or such*
22 *contract) to be provided to individuals covered*
23 *under the risk-sharing contract, if the failure has*
24 *adversely affected (or has a substantial likelihood*
25 *of adversely affecting) these individuals.*

1 “(7) *FRAUD, KICKBACKS, AND OTHER PROHIB-*
2 *ITED ACTIVITIES.*—Any individual or entity that the
3 Secretary determines has committed an act which is
4 described in section 1128A or section 1128B.

5 “(8) *ENTITIES CONTROLLED BY A SANCTIONED*
6 *INDIVIDUAL.*—Any entity with respect to which the
7 Secretary determines that a person—

8 “(A)(i) with an ownership or control interest
9 (as defined in section 1124(a)(3)) in that entity,
10 or

11 “(ii) who is an officer, director, agent, or
12 managing employee (as defined in section
13 1126(b)) of that entity—
14 is a person—

15 “(B)(i) who has been convicted of any of-
16 fense described in subsection (a) or in paragraph
17 (1), (2), or (3) of this subsection;

18 “(ii) against whom a civil monetary penalty
19 has been assessed under section 1128A; or

20 “(iii) who has been excluded from participa-
21 tion under a program under title XVIII or under
22 a State health care program.

23 “(9) *FAILURE TO DISCLOSE REQUIRED INFOR-*
24 *MATION.*—Any entity that did not fully and accurately

1 *make any disclosure required by section 1124 or sec-*
2 *tion 1126.*

3 “(10) *FAILURE TO SUPPLY REQUESTED INFOR-*
4 *MATION ON SUBCONTRACTORS AND SUPPLIERS.—*
5 *Any disclosing entity (as defined in section*
6 *1124(a)(2)) that fails to supply (within such period as*
7 *may be specified by the Secretary in regulations) upon*
8 *request specifically addressed to the entity by the*
9 *Secretary or by the State agency administering or su-*
10 *pervising the administration of a State health care*
11 *program—*

12 “(A) *full and complete information as to the*
13 *ownership of a subcontractor (as defined by the*
14 *Secretary in regulations) with whom the entity*
15 *has had, during the previous 12 months, business*
16 *transactions in an aggregate amount in excess of*
17 *\$25,000, or*

18 “(B) *full and complete information as to any*
19 *significant business transactions (as defined by*
20 *the Secretary in regulations), occurring during*
21 *the five-year period ending on the date of such*
22 *request, between the entity and any wholly owned*
23 *supplier or between the entity and any*
24 *subcontractor.*

1 “(11) *FAILURE TO SUPPLY PAYMENT INFORMA-*
2 *TION.*—Any individual or entity furnishing items or
3 services for which payment may be made under title
4 XVIII or a State health care program that fails to
5 provide such information as the Secretary or the ap-
6 propriate State agency finds necessary to determine
7 whether such payments are or were due and the
8 amounts thereof, or has refused to permit such exami-
9 nation of its records by or on behalf of the Secretary or
10 that agency as may be necessary to verify such
11 information.

12 “(12) *FAILURE TO GRANT IMMEDIATE*
13 *ACCESS.*—Any individual or entity that fails to grant
14 immediate access, upon reasonable request (as defined
15 by the Secretary in regulations) to any of the
16 following:

17 “(A) *To the Secretary, or to the agency used*
18 *by the Secretary, for the purpose specified in the*
19 *first sentence of section 1864(a) (relating to*
20 *compliance with conditions of participation or*
21 *payment).*

22 “(B) *To the Secretary or the State agency,*
23 *to perform the reviews and surveys required under*
24 *State plans under paragraphs (26), (31), and*

1 (33) of section 1902(a) and under section
2 1903(g).

3 “(C) To the Inspector General of the De-
4 partment of Health and Human Services, for the
5 purpose of reviewing records, documents, and
6 other data necessary to the performance of the
7 statutory functions of the Inspector General.

8 “(D) To a State medicaid fraud control unit
9 (as defined in section 1903(q)), for the purpose of
10 conducting activities described in that section.

11 “(13) FAILURE TO TAKE CORRECTIVE
12 ACTION.—Any hospital that fails to comply substan-
13 tially with a corrective action required under section
14 1886(f)(2)(B).

15 “(14) DEFAULT ON HEALTH EDUCATION LOAN
16 OR SCHOLARSHIP OBLIGATIONS.—Any individual
17 who the Secretary determines is in default on repay-
18 ments of scholarship obligations or loans in connection
19 with health professions education made or secured, in
20 whole or in part, by the Secretary, except that (A) the
21 Secretary shall not exclude pursuant to this paragraph
22 a physician who is the sole community physician or
23 sole source of essential specialized services in a com-
24 munity if a State requests that the physician not be
25 excluded, and (B) the Secretary shall take into ac-

1 *count, in determining whether to exclude any other*
2 *physician pursuant to this paragraph, access of benefi-*
3 *ciaries to physician services for which payment may be*
4 *made under title XVIII or XIX.*

5 *“(c) NOTICE, EFFECTIVE DATE, AND PERIOD OF*
6 *EXCLUSION.—(1) An exclusion under this section or under*
7 *section 1128A shall be effective at such time and upon such*
8 *reasonable notice to the public and to the individual or entity*
9 *excluded as may be specified in regulations consistent with*
10 *paragraph (2).*

11 *“(2)(A) Except as provided in subparagraph (B), such*
12 *an exclusion shall be effective with respect to services fur-*
13 *nished to an individual on or after the effective date of the*
14 *exclusion.*

15 *“(B) Unless the Secretary determines that the health*
16 *and safety of individuals receiving services warrants the ex-*
17 *clusion taking effect earlier, an exclusion shall not apply to*
18 *payments made under title XVIII or under a State health*
19 *care program for—*

20 *“(i) inpatient institutional services furnished to*
21 *an individual who was admitted to such institution*
22 *before the date of the exclusion, or*

23 *“(ii) home health services and hospice care fur-*
24 *nished to an individual under a plan of care estab-*
25 *lished before the date of the exclusion,*

1 *until the passage of 30 days after the effective date of the*
2 *exclusion.*

3 “(3)(A) *The Secretary shall specify, in the notice of ex-*
4 *clusion under paragraph (1) and the written notice under*
5 *section 1128A, the minimum period (or, in the case of an*
6 *exclusion of an individual under subsection (b)(12), the*
7 *period) of the exclusion.*

8 “(B) *In the case of an exclusion under subsection (a),*
9 *the minimum period of exclusion shall be not less than five*
10 *years, except that, upon the request of a State, the Secretary*
11 *may waive the exclusion in the case of an individual or*
12 *entity that is the sole community physician or sole source of*
13 *essential specialized services in a community or in the case of*
14 *an individual or entity that demonstrates to the Secretary’s*
15 *satisfaction that the exclusion would adversely affect a pro-*
16 *gram or programs under title XVIII or XIX. The Secre-*
17 *tary’s decision whether to waive the exclusion shall not be*
18 *reviewable.*

19 “(C) *In the case of an exclusion of an individual under*
20 *subsection (b)(12), the period of the exclusion shall be equal*
21 *to the sum of—*

22 “(i) *the length of the period in which the individ-*
23 *ual failed to grant the immediate access described in*
24 *that subsection, and*

1 “(ii) an additional period, not to exceed 90 days,
2 set by the Secretary.

3 “(d) NOTICE TO STATE AGENCIES AND EXCLUSION
4 UNDER STATE HEALTH CARE PROGRAMS.—(1) Subject to
5 paragraph (3), the Secretary shall exercise the authority
6 under subsection (b) in a manner that results in an individ-
7 ual’s or entity’s exclusion from all the programs under title
8 XVIII and all the State health care programs in which the
9 individual or entity may otherwise participate.

10 “(2) The Secretary shall promptly notify each appropri-
11 ate State agency administering or supervising the adminis-
12 tration of each State health care program (and, in the case of
13 an exclusion effected pursuant to subsection (a) and to which
14 section 304(a)(5) of the Controlled Substances Act may
15 apply, the Attorney General)—

16 “(A) of the fact and circumstances of each exclu-
17 sion effected against an individual or entity under this
18 section or section 1128A, and

19 “(B) the period (described in paragraph (3)) for
20 which the State agency is directed to exclude the indi-
21 vidual or entity from participation in the State health
22 care program.

23 “(3)(A) Except as provided in subparagraph (B), the
24 period of the exclusion under a State health care program

1 *under paragraph (2) shall be the same as any period of exclu-*
2 *sion under a program under title XVIII.*

3 “(B) *The Secretary may waive an individual’s or enti-*
4 *ty’s exclusion under a State health care program under para-*
5 *graph (2) if the Secretary receives and approves a request for*
6 *the waiver with respect to the individual or entity from the*
7 *State agency administering or supervising the administra-*
8 *tion of the program.*

9 “(e) *NOTICE TO STATE LICENSING AGENCIES.—*

10 “(1) *The Secretary shall—*

11 “(A) *promptly notify the appropriate State*
12 *or local agency or authority having responsibility*
13 *for the licensing or certification of an individual*
14 *or entity excluded (or directed to be excluded)*
15 *from participation under this section or section*
16 *1128A, of the fact and circumstances of the*
17 *exclusion,*

18 “(B) *request that appropriate investigations*
19 *be made and sanctions invoked in accordance*
20 *with applicable State law and policy, and*

21 “(C) *request that the State or local agency*
22 *or authority keep the Secretary and the Inspector*
23 *General of the Department of Health and Human*
24 *Services fully and currently informed with respect*
25 *to any actions taken in response to the request.*

1 “(2) *The Secretary, any agency administering a*
2 *State health care program, and any utilization and*
3 *quality control peer review organization possessing in-*
4 *formation with respect to possible misrepresentation or*
5 *fraud by an individual or entity to which this section*
6 *applies shall promptly notify the appropriate State or*
7 *local agency or authority referred to in paragraph (1)*
8 *of the facts and circumstances of the case.*

9 “(f) *NOTICE, HEARING, AND JUDICIAL REVIEW.—*

10 *(1) Any individual or entity that is excluded (or directed to*
11 *be excluded) from participation under this section is entitled*
12 *to reasonable notice and opportunity for a hearing thereon by*
13 *the Secretary to the same extent as is provided in section*
14 *205(b), and to judicial review of the Secretary’s final deci-*
15 *sion after such hearing as is provided in section 205(g).*

16 “(2) *The provisions of section 205(h) shall apply with*
17 *respect to this section and sections 1128A and 1156 to the*
18 *same extent as it is applicable with respect to title II.*

19 “(g) *APPLICATION FOR TERMINATION OF EXCLU-*
20 *SION.—(1) An individual or entity excluded (or directed to*
21 *be excluded) from participation under this section or section*
22 *1128A may apply to the Secretary, in the manner specified*
23 *by the Secretary in regulations and at the end of the mini-*
24 *mum period of exclusion provided under subsection (c)(3)*
25 *and at such other times as the Secretary may provide, for*

1 *termination of the exclusion effected under this section or sec-*
 2 *tion 1128A.*

3 “(2) *The Secretary may terminate the exclusion if the*
 4 *Secretary determines, on the basis of the conduct of the appli-*
 5 *cant which occurred after the date of the notice of exclusion or*
 6 *which was unknown to the Secretary at the time of the exclu-*
 7 *sion, that—*

8 “(A) *there is no basis under subsection (a) or (b)*
 9 *or section 1128A(a) for a continuation of the exclu-*
 10 *sion, and*

11 “(B) *there are reasonable assurances that the*
 12 *types of actions which formed the basis for the original*
 13 *exclusion have not recurred and will not recur.*

14 “(3) *The Secretary shall promptly notify each appropri-*
 15 *ate State agency administering or supervising the adminis-*
 16 *tration of each State health care program (and, in the case of*
 17 *an exclusion effected pursuant to subsection (a) and to which*
 18 *section 304(a)(5) of the Controlled Substances Act may*
 19 *apply, the Attorney General) of the fact and circumstances of*
 20 *each termination of exclusion made under this subsection.*

21 “(h) *DEFINITION OF STATE HEALTH CARE PRO-*
 22 *GRAM.—For purposes of this section and sections 1128A and*
 23 *1128B, the term ‘State health care program’ means—*

24 “(1) *a State plan approved under title XIX,*

1 “(2) any program receiving funds under title V or
2 from an allotment to a State under such title, or

3 “(3) any program receiving funds under title XX
4 or from an allotment to a State under such title.”.

5 **SEC. 102. CIVIL MONETARY PENALTIES.**

6 (a) **GROUND FOR IMPOSITION.**—(1) Section
7 1128A(a)(1) (42 U.S.C. 1320a-7a(a)(1)) is amended by
8 striking out “the Secretary determines” and all that follows
9 through “; or” and inserting in lieu thereof “the Secretary
10 determines—

11 “(A) is for a medical or other item or service that
12 the person knows or has reason to know was not pro-
13 vided as claimed,

14 “(B) is for a medical or other item or service and
15 the person knows or has reason to know the claim is
16 false or fraudulent,

17 “(C) is presented for a physician’s service (or an
18 item or service incident to a physician’s service) by a
19 person who knows or has reason to know that the indi-
20 vidual who furnished (or supervised the furnishing of)
21 the service was not licensed as a physician, or

22 “(D) is for a medical or other item or service fur-
23 nished during a period in which the person was ex-
24 cluded under the program under which the claim was
25 made pursuant to a determination by the Secretary

1 *under this section or under section 1128, 1156,*
 2 *1160(b) (as in effect on September 2, 1982), 1862(d)*
 3 *(as in effect on the date of the enactment of the Medi-*
 4 *care and Medicaid Patient and Program Protection*
 5 *Act of 1986), or 1866(b);”.*

6 (2) *Section 1128A(a)(2) is amended—*

7 (A) *in subparagraph (B) by inserting “(or other*
 8 *requirement of a State plan under title XIX)” after*
 9 *“State agency”, and*

10 (B) *by inserting at the end “or (D) an agreement*
 11 *pursuant to section 1866(a)(1)(G), or”.*

12 (3) *Subsection (a) of section 1128A is further*
 13 *amended—*

14 (A) *by inserting after paragraph (2) and before*
 15 *the end matter of such subsection the following new*
 16 *paragraph:*

17 “(3) *gives to any person, with respect to coverage*
 18 *under title XVIII of inpatient hospital services subject*
 19 *to the provisions of section 1886, information that he*
 20 *knows or has reason to know is false or misleading,*
 21 *and that could reasonably be expected to influence the*
 22 *decision when to discharge such person or another indi-*
 23 *vidual from the hospital;”, and*

24 (B) *in the matter following paragraph (3)—*

1 (i) by inserting “(or, in cases under para-
 2 graph (3), \$15,000 for each individual with re-
 3 spect to whom false or misleading information
 4 was given)” before the period at the end of the
 5 first sentence, and

6 (ii) by adding at the end thereof the follow-
 7 ing new sentence: “In addition the Secretary may
 8 make a determination in the same proceeding to
 9 exclude the person from participation in the pro-
 10 grams under title XVIII and to direct the appro-
 11 priate State agency to exclude the person from
 12 participation in any State health care program.”.

13 (4) No civil penalty or assessment may be imposed
 14 under section 1128A(a) of the Social Security Act in the
 15 case of a claim filed before August 13, 1981, if liability for
 16 the amount of the penalty or assessment could not have been
 17 imposed with respect to the claim under section 3729 of title
 18 31, United States Code (relating to false claims).

19 (b) *STATUTE OF LIMITATION ON ACTIONS.*—Subsec-
 20 tion (b)(1) of section 1128A is amended by adding at the end
 21 the following new sentences: “The Secretary may not initiate
 22 an action under this section with respect to any claim later
 23 than six years after the date the claim was presented. The
 24 Secretary may initiate an action under this section by serv-

1 *ing notice of the action in any manner authorized by Rule 4*
 2 *of the Federal Rules of Civil Procedure.”.*

3 (c) *CONFORMING AMENDMENT.*—Subsections (b), (c),
 4 (f), and (g) of section 1128A are each amended by striking
 5 out “penalty or assessment” and inserting in lieu thereof
 6 “penalty, assessment, or exclusion” each place it appears.

7 (d) *PRO-RATED PAYMENT OF RECOVERIES TO*
 8 *STATE AGENCIES.*—Subsection (e)(1)(A) of section 1128A
 9 is amended by striking out “equal to the State’s share of the
 10 amount paid by the State agency” and inserting in lieu
 11 thereof “bearing the same proportion to the total amount re-
 12 covered as the State’s share of the amount paid by the State
 13 agency for such claim bears to the total amount paid”.

14 (e) *NOTICE TO STATE AGENCIES.*—Subsection (g) of
 15 section 1128A is further amended by inserting “the appropri-
 16 ate State agency or agencies administering or supervising the
 17 administration of State health care programs (as defined in
 18 section 1128(h)),” after “professional organization,”.

19 (f) *APPLICATION OF SUBPOENA POWER AND INJUNC-*
 20 *TIVE POWERS.*—Section 1128A is further amended by
 21 adding at the end the following new subsections:

22 “(i) The provisions of subsections (d) and (e) of section
 23 205 shall apply with respect to this section to the same extent
 24 as they are applicable with respect to title II. The Secretary
 25 may delegate the authority granted by section 205(d) (as

1 *made applicable to this section) to the Inspector General in*
 2 *the Department of Health and Human Services for purposes*
 3 *of any investigation under this section.*

4 “(j) *Whenever the Secretary has reason to believe that*
 5 *any person has engaged or is engaging in any activity which*
 6 *makes the person subject to a civil monetary penalty under*
 7 *this section, the Attorney General, at the request of the Secre-*
 8 *tary, may bring an action in an appropriate district court of*
 9 *the United States (or, if applicable, a United States court of*
 10 *any territory) to enjoin such activity, or to enjoin the person*
 11 *from concealing, removing, encumbering, or disposing of*
 12 *assets which may be required in order to pay a civil mone-*
 13 *tary penalty if any such penalty were to be imposed or to*
 14 *seek other appropriate relief.”.*

15 **SEC. 103. CRIMINAL PENALTIES FOR ACTS INVOLVING MEDI-**
 16 **CARE AND STATE HEALTH CARE PROGRAMS.**

17 (a) **TECHNICAL AMENDMENTS.**—Section 1909 (42
 18 *U.S.C. 1396h) is amended—*

19 (1) *by amending the heading to read as follows:*
 20 “**CRIMINAL PENALTIES FOR ACTS INVOLVING MEDICARE**
 21 **OR STATE HEALTH CARE PROGRAMS”;**

22 (2) *in subsection (a)(1), by striking out “a State*
 23 *plan approved under this title” and inserting in lieu*
 24 *thereof “a program under title XVIII or a State health*
 25 *care program (as defined in section 1128(h))”;*

1 (3) in the matter in subsection (a) following para-
 2 graph (4), by striking out “this title” the first place it
 3 appears and inserting in lieu thereof “the program”;

4 (4) in the last sentence of subsection (a), by strik-
 5 ing out “this title” the first place it appears and insert-
 6 ing in lieu thereof “title XIX”, and by striking out
 7 “this title” the second place it appears and inserting in
 8 lieu thereof “that title”;

9 (5) in paragraphs (1)(A), (1)(B), (2)(A), (2)(B),
 10 and (3)(A) of subsection (b), by striking out “this
 11 title” and inserting in lieu thereof “title XVIII or a
 12 State health care program” each place it appears;

13 (6) in subsection (c), by striking out “or home
 14 health agency (as those terms are employed in this
 15 title)” and inserting in lieu thereof “home health
 16 agency, or other entity for which certification is re-
 17 quired under title XVIII or a State health care pro-
 18 gram”; and

19 (7) in subsection (d), by striking out “this title”
 20 and inserting in lieu thereof “title XIX” each place it
 21 appears.

22 (b) *CRIMINAL PENALTIES FOR PHYSICIAN MISREP-*
 23 *RESENTATIONS.*—Subsection (a) of such section is further
 24 amended—

1 (1) by striking out “or” at the end of paragraph

2 (3),

3 (2) by inserting “or” at the end of paragraph (4),

4 and

5 (3) by inserting after paragraph (4) the following

6 new paragraph:

7 “(5) presents or causes to be presented a claim for

8 a physician’s service for which payment may be made

9 under a program under title XVIII or a State health

10 care program and knows that the individual who fur-

11 nished the service was not licensed as a physician,”.

12 (c) *REDESIGNATION OF SECTION 1877(d) AS SEC-*

13 *TION 1128B(e).*—Subsection (d) of section 1877 (42 U.S.C.

14 1395nn) is redesignated as subsection (e) and is transferred

15 and inserted in section 1909 at the end thereof.

16 (d) *REDESIGNATION OF SECTION 1909 AS SECTION*

17 *1128B.*—Section 1909, as amended by subsections (a), (b),

18 and (c) of this section, is redesignated as section 1128B and

19 is transferred to title XI and inserted immediately after sec-

20 tion 1128A.

21 (e) *REPEAL.*—Section 1877 (other than subsection (d)

22 thereof which was transferred under subsection (c) of this sec-

23 tion) is repealed.

1 *SEC. 104. INFORMATION CONCERNING SANCTIONS TAKEN BY*
 2 *STATE LICENSING AUTHORITIES AGAINST*
 3 *HEALTH CARE PRACTITIONERS AND PROVIDERS.*

4 (a) *MEDICAID PLAN REQUIREMENT.*—Section
 5 1902(a) (42 U.S.C. 1396a(a)) is amended—

6 (1) by striking out “and” at the end of paragraph
 7 (45),

8 (2) by striking out the period at the end of para-
 9 graph (46) and inserting in lieu thereof “; and”, and

10 (3) by inserting after paragraph (46) the follow-
 11 ing new paragraph:

12 “(47) provide that the State will provide informa-
 13 tion and access to certain information respecting sanc-
 14 tions taken against health care practitioners and pro-
 15 viders by State licensing authorities in accordance
 16 with section 1920.”.

17 (b) *INFORMATION REQUIRED.*—Title XIX is amended
 18 by redesignating section 1920 as section 1921 and inserting
 19 after section 1919 the following new section:

20 “*INFORMATION CONCERNING SANCTIONS TAKEN BY*
 21 *STATE LICENSING AUTHORITIES AGAINST HEALTH*
 22 *CARE PRACTITIONERS AND PROVIDERS*

23 “*SEC. 1920. (a) INFORMATION REPORTING RE-*
 24 *QUIREMENT.*—The requirement referred to in section
 25 1902(a)(47) is that the State must provide for the following:

1 “(1) *INFORMATION REPORTING SYSTEM.*—The
2 *State must have in effect a system of reporting the fol-*
3 *lowing information with respect to formal proceedings*
4 *(as defined by the Secretary in regulations) concluded*
5 *against a health care practitioner or entity by any au-*
6 *thority of the State (or of a political subdivision there-*
7 *of) responsible for the licensing of health care practi-*
8 *tioners or entities:*

9 “(A) *Any adverse action taken by such li-*
10 *censing authority as a result of the proceeding, in-*
11 *cluding any revocation or suspension of a license*
12 *(and the length of any such suspension), reprimand,*
13 *censure, or probation.*

14 “(B) *Any dismissal or closure of the proceed-*
15 *ings by reason of the practitioner or entity sur-*
16 *rendering the license or leaving the State or*
17 *jurisdiction.*

18 “(C) *Any other loss of the license of the*
19 *practitioner or entity, whether by operation of*
20 *law, voluntary surrender, or otherwise.*

21 “(2) *ACCESS TO DOCUMENTS.*—The State must
22 *provide the Secretary (or an entity designated by the*
23 *Secretary) with access to such documents of the au-*
24 *thority described in paragraph (1) as may be necessary*
25 *for the Secretary to determine the facts and circum-*

stances concerning the actions and determinations described in such paragraph for the purpose of carrying out this Act.

“(b) *FORM OF INFORMATION.*—The information described in subsection (a)(1) shall be provided to the Secretary (or, under suitable arrangements made by the Secretary, to another entity) in such a form and manner as the Secretary determines to be appropriate in order to provide for activities of the Secretary under this Act and in order to provide, directly or through suitable arrangements made by the Secretary, information—

“(1) to agencies administering Federal health care programs,

“(2) to licensing authorities described in subsection (a)(1),

“(3) to State agencies administering or supervising the administration of State health care programs (as defined in section 1128(h)),

“(4) to utilization and quality control peer review organizations described in part B of title XI,

“(5) to State medicaid fraud control units (as defined in section 1903(q)), and

“(6) to the Attorney General and such other law enforcement officials as the Secretary deems appropriate,

1 in order for such authorities to determine the fitness of indi-
 2 viduals to provide health care services, to protect the health
 3 and safety of individuals receiving health care through such
 4 programs, and to protect the fiscal integrity of such programs.

5 “(c) **CONFIDENTIALITY OF INFORMATION PROVIDED.**—The Secretary shall provide for suitable safeguards for
 6 the confidentiality of such of the information furnished under
 7 subsection (a) as is not otherwise available to the public.”

9 **SEC. 105. OBLIGATION OF HEALTH CARE PRACTITIONERS AND**
 10 **PROVIDERS.**

11 Section 1156 (42 U.S.C. 1320c-5) is amended—

12 (1) by striking out “title XVIII” and “such title”
 13 in subsection (a) and inserting in lieu thereof “this
 14 Act” in each instance, and

15 (2) by striking out “title XVIII” in subsection
 16 (b) and inserting in lieu thereof “this Act” each place
 17 it appears.

18 **SEC. 106. EXCLUSION UNDER THE MEDICAID PROGRAM.**

19 Section 1902 (42 U.S.C. 1396b) is amended by insert-
 20 ing after subsection (k) the following new subsection:

21 “(l)(1) In addition to any other authority, a State may
 22 exclude any individual or entity for purposes of participating
 23 under the State plan under this title for any reason for which
 24 the Secretary could exclude the individual or entity from par-

1 participation in a program under title XVIII under section
2 1128, 1128A, or 1866(b)(2).

3 “(2) In order for a State to receive payments for medi-
4 cal assistance under section 1903(a), with respect to pay-
5 ments the State makes to a health maintenance organization
6 (as defined in section 1903(m)) or to an entity furnishing
7 services under a waiver approved under section 1915(b)(1),
8 the State must provide that it will exclude from participation,
9 as such an organization or entity, any organization or entity
10 that—

11 “(A) could be excluded under section 1128(b)(8)
12 (relating to owners and managing employees who have
13 been convicted of certain crimes or received other sanc-
14 tions), or

15 “(B) has, directly or indirectly, a substantial con-
16 tractual relationship (as defined by the Secretary) with
17 an individual or entity that is described in section
18 1128(b)(8)(B).

19 “(3) As used in this subsection, the term ‘exclude’ in-
20 cludes the refusal to enter into or renew a participation agree-
21 ment or the termination of such an agreement.”.

22 **SEC. 107. MISCELLANEOUS AND CONFORMING AMENDMENTS.**

23 (a) **MATERNAL AND CHILD HEALTH PROGRAM.**—
24 Section 504(b) (42 U.S.C. 704(b)) is amended—

1 (1) by striking out “or” at the end of paragraph
2 (4),

3 (2) by striking out the period at the end of para-
4 graph (5) and inserting in lieu thereof “; or”, and

5 (3) by adding at the end thereof the following new
6 paragraph:

7 “(6) payment for any item or service (other than
8 an emergency item or service) furnished—

9 “(A) by an individual or entity excluded
10 from participation in the program under this title
11 pursuant to section 1128 or section 1128A, or

12 “(B) at the medical direction or on the pre-
13 scription of a physician during the period when
14 the physician is excluded pursuant to section
15 1128 or section 1128A from participation in the
16 program under this title.”.

17 (b) *DISCLOSURE REQUIREMENTS.*—(1) Subsection
18 (a) of section 1126 (42 U.S.C. 1320a-5) is amended—

19 (A) in the first sentence, by striking out “or other
20 institution” and all that follows through the period at
21 the end and inserting in lieu thereof “or other entity
22 (other than an individual practitioner or group of prac-
23 titioners) shall be required to disclose to the Secretary
24 or to the appropriate State agency the name of any

1 *person that is a person described in subparagraphs (A)*
 2 *and (B) of section 1128(b)(8).”, and*

3 *(B) in the second sentence, by striking out “insti-*
 4 *tution, organization, or agency” and inserting in lieu*
 5 *thereof “entity”.*

6 *(2) Subsection (b) of such section is amended by strik-*
 7 *ing out “institution, organization, or agency” and inserting*
 8 *in lieu thereof “entity” each place it appears.*

9 *(c) MEDICARE PAYMENTS.—(1) Section 1862 (42*
 10 *U.S.C. 1395y) is amended—*

11 *(A) by striking out subsection (d), and*

12 *(B) by amending subsection (e) to read as follows:*

13 *“(e) No payment may be made under this title with re-*
 14 *spect to any item or service (other than an emergency item or*
 15 *service) furnished—*

16 *“(1) by an individual or entity during the period*
 17 *when such individual or entity is excluded pursuant to*
 18 *section 1128 or section 1128A from participation in*
 19 *the program under this title;*

20 *“(2) at the medical direction or on the prescrip-*
 21 *tion of a physician during the period when he is ex-*
 22 *cluded pursuant to section 1128 or section 1128A from*
 23 *participation in the program under this title.”.*

24 *(2) Section 1842(j) (42 U.S.C. 1395u(j)) is*
 25 *amended—*

1 (A) in paragraph (2)—

2 (i) by amending subparagraph (A) to read as
3 follows:

4 “(A) excluding a physician from participation in
5 the programs under this title for a period not to exceed
6 5 years, in accordance with the procedures of subsec-
7 tions (c), (f), and (g) of section 1128, or”, and

8 (ii) by striking out “barred from participa-
9 tion in the program” in the second sentence and
10 inserting in lieu thereof “excluded from participa-
11 tion in the programs”; and

12 (B) by striking out “bar” in paragraph (3)(A)
13 and inserting in lieu thereof “exclude”.

14 (3) Section 1862(h)(4) (42 U.S.C. 1395y(h)(4)) is
15 amended by striking out “paragraphs (2) and (3) of subsec-
16 tion (d)” and inserting in lieu thereof “subsections (c), (f),
17 and (g) of section 1128”.

18 (4) Paragraph (3) of section 1886(f) (42 U.S.C.
19 1395ww(f)) is amended to read as follows:

20 “(3) The provisions of subsections (c) through (g) of sec-
21 tion 1128 shall apply to determinations made under para-
22 graph (2) in the same manner as they apply to exclusions
23 effected under section 1128(b)(13).”.

1 (d) *TERMINATION OF PROVIDER AGREEMENTS*
2 *UNDER MEDICARE.*—Section 1866 (42 U.S.C. 1395cc) is
3 amended—

4 (1) *by striking out paragraph (3) of subsection*
5 (a);

6 (2) *by amending subsection (b) to read as follows:*

7 “(b)(1) *A provider of services may terminate an agree-*
8 *ment with the Secretary under this section at such time and*
9 *upon such notice to the Secretary and the public as may be*
10 *provided in regulations, except that notice of more than six*
11 *months shall not be required.*

12 “(2) *The Secretary may refuse to enter into an agree-*
13 *ment under this section or, upon such reasonable notice to the*
14 *provider and the public as may be specified in regulations,*
15 *may refuse to renew or may terminate such an agreement*
16 *after the Secretary—*

17 “(A) *has determined that the provider fails to*
18 *comply substantially with the provisions of the agree-*
19 *ment, with the provisions of this title and regulations*
20 *thereunder, or with a corrective action required under*
21 *section 1886(f)(2)(B),*

22 “(B) *has determined that the provider fails sub-*
23 *stantially to meet the applicable provisions of section*
24 *1861, or*

1 “(C) has excluded the provider from participation
2 in a program under this title pursuant to section 1128
3 or section 1128A.

4 “(3) A termination of an agreement or a refusal to
5 renew an agreement under this subsection shall be effective
6 on the same date, and with respect to the same items and
7 services, as an exclusion from participation under the pro-
8 grams under this title would become effective under section
9 1128(c).”;

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10 (3) in paragraphs (1) and (3) of subsection (c), by
11 striking out “an agreement filed under this title by a
12 provider of services has been terminated by the Secre-
13 tary” and inserting in lieu thereof “the Secretary has
14 terminated or has refused to renew an agreement under
15 this title with a provider of services”;

16 (4) by inserting “or nonrenewal” in subsection (c)
17 after “termination” each place it appears; and

18 (5) by adding at the end the following new
19 subsection:

20 “(g)(1) Except as provided in paragraph (2), an institu-
21 tion or agency dissatisfied with a determination by the Secre-
22 tary that it is not a provider of services or with a determina-
23 tion described in subsection (b)(2) shall be entitled to a
24 hearing thereon by the Secretary (after reasonable notice) to
25 the same extent as is provided in section 205(b), and to judi-

1 *cial review of the Secretary's final decision after such hear-*
 2 *ing as is provided in section 205(g).*

3 “(2) *An institution or agency is not entitled to separate*
 4 *notice and opportunity for a hearing under both section 1128*
 5 *and this section with respect to a determination or determina-*
 6 *tions based on the same underlying facts and issues.”.*

7 (e) *CONFORMING AMENDMENT.—Section 1869 (42*
 8 *U.S.C. 1395ff) is amended by striking out subsection (c).*

9 (f) *MEDICAID PLAN REVISIONS.—Section 1902(a)*
 10 *(42 U.S.C. 1396b(a)) is amended—*

11 (1) *in paragraph (23), by inserting “subsection*
 12 *(g) and in” after “except as provided in”,*

13 (2) *in paragraph (38), by striking out “respective-*
 14 *ly, (A)” and all that follows up to the semicolon at the*
 15 *end and inserting in lieu thereof “the information de-*
 16 *scribed in section 1128(b)(9)”, and*

17 (3) *in paragraph (39)—*

18 (A) *by striking out “bar” and inserting in*
 19 *lieu thereof “exclude”,*

20 (B) *by striking out “person” and inserting*
 21 *in lieu thereof “individual or entity” each place it*
 22 *appears, and*

23 (C) *by inserting “or section 1128A” after*
 24 *“section 1128”.*

1 (g) *DENIAL OF FEDERAL FINANCIAL PARTICIPATION*
 2 *UNDER MEDICAID.*—Paragraph (2) of section 1903(i) (42
 3 *U.S.C. 1396b(i))* is amended to read as follows:

4 “(2) with respect to any amount expended for an
 5 item or service (other than an emergency item or serv-
 6 ice) furnished—

7 “(A) under the plan by any individual or
 8 entity during any period when the individual or
 9 entity is excluded from participation in the State
 10 plan under this title pursuant to section 1128 or
 11 section 1128A, or

12 “(B) at the medical direction or on the pre-
 13 scription of a physician, during the period when
 14 such physician is excluded pursuant to section
 15 1128 or section 1128A from participation in the
 16 program under this title.”.

17 (h) *MEDICAID DISCLOSURE REQUIREMENTS.*—Sec-
 18 tion 1903(n) (42 *U.S.C. 1396b(n))* is amended by striking
 19 out “has a direct or indirect ownership or control interest of 5
 20 percent or more” and inserting in lieu thereof “is a person
 21 with an ownership or control interest (as defined in section
 22 1124(a)(3))”.

23 (i) *TITLE XX.*—Section 2005(a) (42 *U.S.C.*
 24 1397d(a)) is amended—

1 (1) *by striking out “or” at the end of paragraph*
 2 (7),

3 (2) *by striking out the period at the end of para-*
 4 *graph (8) and inserting in lieu thereof “; or”, and*

5 (3) *by adding at the end thereof the following new*
 6 *paragraph:*

7 “(9) *for payment for any item or service (other*
 8 *than an emergency item or service) furnished—*

9 “(A) *by an individual or entity excluded*
 10 *from participation in the program under this title*
 11 *pursuant to section 1128 or section 1128A, or*

12 “(B) *at the direction or on the prescription of*
 13 *a physician during the period when the physician*
 14 *is excluded pursuant to section 1128 or section*
 15 *1128A from participation in the program under*
 16 *this title.”.*

17 (j) *DENIAL, REVOCATION, OR SUSPENSION OF REG-*
 18 *ISTRATION TO MANUFACTURE, DISTRIBUTE, OR DIS-*
 19 *PENSE A CONTROLLED SUBSTANCE FOR ENTITIES EX-*
 20 *CLUDED FROM THE MEDICARE PROGRAM.—Section*
 21 *304(a) of the Controlled Substances Act (21 U.S.C. 824(a))*
 22 *is amended—*

23 (1) *by striking out “or” at the end of paragraph*
 24 (3),

1 (2) by striking out the period at the end of para-
2 graph (4) and inserting in lieu thereof “; or”, and

3 (3) by inserting after paragraph (4) the following
4 new paragraph:

5 “(5) has been excluded (or directed to be ex-
6 cluded) from participation in a program pursuant to
7 section 1128(a) of the Social Security Act.”.

8 **SEC. 108. CLARIFICATION OF MEDICAID MORATORIUM PROVI-**
9 **SIONS OF DEFICIT REDUCTION ACT OF 1984.**

10 Section 2373(c) of the Deficit Reduction Act of 1984
11 (Public Law 98-369; 98 Stat. 1112) is amended to read as
12 follows:

13 “(c)(1) The Secretary of Health and Human Services
14 shall not take any compliance, disallowance, penalty, or other
15 regulatory action against a State with respect to the morato-
16 rium period described in paragraph (2) by reason of such
17 State’s plan described in paragraph (5) under title XIX of
18 the Social Security Act (including any part of the plan oper-
19 ating pursuant to section 1902(f) of such Act), or the oper-
20 ation thereunder, being determined to be in violation of
21 clause (IV), (V), or (VI) of section 1902(a)(10)(A)(ii) or sec-
22 tion 1902(a)(10)(C)(i)(III) of such Act on account of such
23 plan’s (or its operation) having a standard or methodology
24 which the Secretary interprets as being less restrictive than
25 the standard or methodology required under such section, pro-

1 vided that such plan (or its operation) does not make ineligi-
2 ble any individual who would be eligible but for the provi-
3 sions of this subsection.

4 “(2) The moratorium period is the period beginning on
5 October 1, 1982, and ending 18 months after the date on
6 which the Secretary submits the report required under para-
7 graph (3).

8 “(3) The Secretary shall report to the Congress within
9 12 months after the date of the enactment of this Act with
10 respect to the appropriateness, and impact on States and re-
11 cipients of medical assistance, of applying standards and
12 methodologies utilized in cash assistance programs to those
13 recipients of medical assistance who do not receive cash as-
14 sistance, and any recommendations for changes in such
15 requirements.

16 “(4) No provision of law shall repeal or suspend the
17 moratorium imposed by this subsection unless such provision
18 specifically amends or repeals this subsection.

19 “(5) In this subsection, a State plan is considered to
20 include—

21 “(A) any amendment or other change in the plan
22 which is submitted by a State, or

23 “(B) any policy or guideline delineated in the
24 Medicaid operation or program manuals of the State
25 which are submitted by the State to the Secretary,

1 *whether before or after the date of enactment of this Act and*
 2 *whether or not the amendment or change, or the operating or*
 3 *program manual was approved, disapproved, acted upon, or*
 4 *not acted upon by the Secretary.*

5 *“(6) During the moratorium period, the Secretary shall*
 6 *implement (and shall not change by any administrative*
 7 *action) the policy in effect at the beginning of such moratori-*
 8 *um period with respect to—*

9 *“(A) the point in time at which an institutional-*
 10 *ized individual must sell his home (in order that it not*
 11 *be counted as a resource); and*

12 *“(B) the time period allowed for sale of a home of*
 13 *any such individual,*
 14 *who is an applicant for or recipient of medical assistance*
 15 *under the State plan as a medically needy individual (de-*
 16 *scribed in section 1902(a)(10)(C) of the Social Security Act)*
 17 *or as an optional categorically needy individual (described in*
 18 *section 1902(a)(10)(A)(ii) of such Act).”.*

19 **SEC. 109. LIMITATION OF LIABILITY OF MEDICARE BENEFICI-**
 20 **ARIES WITH RESPECT TO SERVICES FURNISHED**
 21 **BY EXCLUDED INDIVIDUALS AND ENTITIES.**

22 *Title XVIII is amended by adding at the end the fol-*
 23 *lowing new section:*

1 *"LIMITATION OF LIABILITY OF BENEFICIARIES WITH RE-*
2 *SPECT TO SERVICES FURNISHED BY EXCLUDED IN-*
3 *DIVIDUALS AND ENTITIES*

4 *"SEC. 1890. Where an individual eligible for benefits*
5 *under this title submits a claim for payment for items or*
6 *services furnished by an individual or entity excluded from*
7 *participation in the programs under this title, pursuant to*
8 *section 1128, 1128A, 1156, 1160 (as in effect on September*
9 *2, 1982), 1862(d) (as in effect on the date of the enactment of*
10 *the Medicare and Medicaid Patient and Program Protection*
11 *Act of 1986), or 1866, and such beneficiary did not know or*
12 *have reason to know that such individual or entity was so*
13 *excluded, then, to the extent permitted by this title, and not-*
14 *withstanding such exclusion, payment shall be made for such*
15 *items or services. In each such case the Secretary shall notify*
16 *the beneficiary of the exclusion of the individual or entity*
17 *furnishing the items or services. Payment shall not be made*
18 *for items or services furnished by an excluded individual or*
19 *entity to a beneficiary after a reasonable time (as determined*
20 *by the Secretary in regulations) after the Secretary has noti-*
21 *fied the beneficiary of the exclusion of that individual or*
22 *entity."*

1 **SEC. 110. DEFINITION OF PERSON WITH OWNERSHIP OR CON-**
 2 **TROL INTEREST.**

3 Section 1124(a)(3)(A)(ii) (42 U.S.C. 1320a-
 4 3(a)(3)(A)(ii)) is amended by striking out "\$25,000 or".

5 **SEC. 111. ALTERNATIVE TO TERMINATION OF MEDICARE PRO-**
 6 **VIDER AGREEMENTS.**

7 (a) *IN GENERAL.*—Section 1866 (42 U.S.C. 1395cc),
 8 as amended by section 107 of this title, is further amended—

9 (1) in subsection (b)(3), by striking out "A termi-
 10 nation" and inserting in lieu thereof "Except as pro-
 11 vided in subsection (f), a termination", and

12 (2) by striking out subsection (f) and inserting in
 13 lieu thereof the following new subsection:

14 "(f)(1) Where the Secretary (A) determines that a pro-
 15 vider of services no longer complies substantially with the
 16 provisions of its agreement under subsection (a)(1), or with
 17 the provisions of this title and regulations thereunder, or with
 18 the applicable provisions of section 1861, (B) further deter-
 19 mines that the provider's deficiencies do not immediately
 20 jeopardize the health and safety of its patients, and (C) has
 21 given the provider a reasonable opportunity to correct its defi-
 22 ciencies and, following this period, has given reasonable
 23 notice to the provider and the public, Secretary may, in lieu
 24 of terminating immediately the agreement under this section,
 25 notify the provider of the deficiencies that form the basis of
 26 the determination to impose the sanction under this subsec-

1 *tion, and of the date by which the deficiencies must be cor-*
2 *rected, which date may not be later than six months (or in the*
3 *case of a skilled nursing facility one year) after the date of*
4 *the notice to the provider.*

5 “(2) *During the period established by the notice under*
6 *paragraph (1) and prior to the correction of the deficiencies*
7 *(as determined by the Secretary), payment under this title*
8 *may be made, for items and services furnished by a provider*
9 *which is the subject of such a notice—*

10 “(A) *in the case of inpatient services, only for*
11 *services provided to an individual admitted to the insti-*
12 *tution before the date of the notice, and*

13 “(B) *in the case of all other services, only for*
14 *services which were scheduled to be provided (as de-*
15 *finied by the Secretary in regulations) before the effec-*
16 *tive date of the notice.*

17 “(3) *The Secretary shall promptly notify each appropri-*
18 *ate State agency which administers or supervises the admin-*
19 *istration of a plan under title XIX of a determination under*
20 *paragraph (1) with respect to any provider of services, and*
21 *may require such State agency to make payment under title*
22 *XIX to the provider only as provided in paragraph (2).*

23 “(4) *If the Secretary determines that the deficiencies*
24 *specified in the notice under paragraph (1) have not been*
25 *corrected by the deadline stated in the notice, the Secretary*

1 shall terminate the agreement under this section, in accord-
 2 ance with subsection (b), effective with respect to all items
 3 and services, as of the date by which the deficiencies were
 4 required to be corrected.”.

5 (b) *REGULATIONS.*—The regulations in effect under
 6 section 1866(f) of the Social Security Act (42 U.S.C.
 7 1395cc(f)) on the day before the date of the enactment of this
 8 Act shall remain in effect until the Secretary of Health and
 9 Human Services promulgates final regulations under such
 10 section as amended by subsection (a).

11 **SEC. 112. CONDITIONAL APPROVAL OF SUPPLIERS.**

12 Title XVIII, as amended by section 109 of this title, is
 13 further amended by adding at the end the following new
 14 section:

15 “CONDITIONAL APPROVAL OF SUPPLIERS

16 “SEC. 1891. (a) In any case where—

17 “(1) an individual or entity (other than a provid-
 18 er) must obtain, as a condition of participation in the
 19 program under this title or as a condition of coverage
 20 under this title of items and services furnished by such
 21 individual or entity, certification that it meets the stat-
 22 utory conditions imposed under this title and the addi-
 23 tional conditions found necessary by the Secretary,
 24 and

25 “(2) the Secretary (A) finds that such individual
 26 or entity is not in substantial compliance with such

1 *conditions, (B) also finds that the individual's or enti-*
2 *ty's deficiencies do not immediately jeopardize the*
3 *health and safety of patients, and (C) has given the in-*
4 *dividual or entity a reasonable opportunity to correct*
5 *its deficiencies and, following that period, has given*
6 *reasonable notice to the provider and the public,*
7 *the Secretary may, in lieu of terminating approval of the*
8 *individual or entity, notify the individual or entity of the*
9 *deficiencies that form the basis of the determination to impose*
10 *the sanction under this section, and of the date by which the*
11 *deficiencies must be corrected, which date may not be later*
12 *than six months after the date of the notice to the individual*
13 *or entity.*

14 *“(b) During the period established by the notice under*
15 *subsection (a), payment under this title may be made only for*
16 *services which were scheduled to be provided (as defined by*
17 *the Secretary in regulations) before the effective date of the*
18 *notice.*

19 *“(c) The Secretary shall promptly notify each appropri-*
20 *ate State agency which administers or supervises the admin-*
21 *istration of a plan under title XIX of a determination under*
22 *subsection (a) with respect to any individual or entity, and*
23 *may require such State agency to make payment under title*
24 *XIX to the individual or entity only as provided in subsec-*
25 *tion (b).*

1 “(d) If the Secretary determines that the deficiencies
 2 specified in the notice under subsection (a) have not been
 3 corrected by the deadline stated in the notice, the Secretary
 4 shall terminate approval of the individual or entity, effective
 5 with respect to all items and services, as of the date by which
 6 the deficiencies were required to be corrected, and shall so
 7 notify the individual or entity, the public, and appropriate
 8 State agencies administering or supervising the administra-
 9 tion of a plan under title XIX.”.

10 **SEC. 113. STATES’ AUTHORITY TO IMPOSE ALTERNATIVE**
 11 **SANCTIONS ON MEDICAID PROVIDERS AND**
 12 **SUPPLIERS.**

13 (a) *IN GENERAL.*—Section 1902(i) (42 U.S.C.
 14 1396a(i)) is amended to read as follows:

15 “(i)(1) In addition to any other authority under State
 16 law, where a State agency (A) determines that a provider
 17 with which it has an agreement under subsection (a)(27) or
 18 any other person that supplies items and services under the
 19 State plan no longer substantially meets the conditions of
 20 participation in the program under such plan, (B) further
 21 determines that the deficiencies of the provider or other
 22 person do not immediately jeopardize the health and safety of
 23 its patients, and (C) has given the provider or other person a
 24 reasonable opportunity to correct its deficiencies and, follow-
 25 ing that period, has given reasonable notice to the provider or

1 other person and the public, the State agency may, in lieu of
 2 terminating immediately its agreement with the provider
 3 under subsection (a)(27) or terminating the participation of
 4 such other person, notify the provider or other person of the
 5 deficiencies that form the basis of the determination to impose
 6 the sanction under this subsection, and of the date by which
 7 the deficiencies must be corrected, which date may not be
 8 later than six months (or, in the case of a skilled nursing
 9 facility, intermediate care facility, or institution for mental
 10 diseases, one year) after the date of the notice to the provider
 11 or other person.

12 “(2) During the period established by the notice under
 13 paragraph (1), and prior to the correction of the deficiencies
 14 (as determined by the Secretary) the State agency shall pro-
 15 vide that payment under the State plan may be made, for
 16 items and services furnished by a provider or other person
 17 which is the subject of such a notice—

18 “(A) in the case of inpatient services, only for
 19 services provided to an individual admitted to the insti-
 20 tution before the date of the notice, and

21 “(B) in the case of all other items and services,
 22 only for items and services which were scheduled to be
 23 provided or supplied (as defined by the Secretary in
 24 regulations) before the effective date of the notice.

1 “(3) *The State agency shall promptly notify the Secre-*
 2 *tary of a determination under paragraph (1) with respect to*
 3 *any provider of services or any other person that supplies*
 4 *items and services under the State plan.*

5 “(4) *If the State agency determines that the deficiencies*
 6 *specified in the notice under paragraph (1) have not been*
 7 *corrected by the deadline stated in the notice, the State*
 8 *agency shall terminate the agreement with the provider under*
 9 *subsection (a)(27) or the participation of such other person,*
 10 *effective with respect to all items and services, as of the date*
 11 *by which the deficiencies were required to be corrected.”.*

12 (b) *REGULATIONS.—The regulations in effect under*
 13 *section 1902(i) of the Social Security Act (42 U.S.C.*
 14 *1396a(i)) on the day before the date of the enactment of this*
 15 *Act shall remain in effect until the Secretary of Health and*
 16 *Human Services promulgates final regulations under such*
 17 *section as amended by this title.*

18 **SEC. 114. SECRETARY'S "LOOK-BEHIND" AUTHORITY WITH RE-**
 19 **SPECT TO CERTIFICATION OF MEDICAID LONG-**
 20 **TERM CARE FACILITIES.**

21 Section 1910(c) (42 U.S.C. 1396i(c)) is amended—

22 (1) *in the second sentence of paragraph (1) by in-*
 23 *serting before the period at the end “, which in the case*
 24 *of a facility participating in programs under both title*
 25 *XVIII and this title shall be the same date for both,*

1 *and shall be effective with respect to services furnished*
2 *on or after such date, except that payment may be*
3 *made for up to thirty days for services furnished to an*
4 *individual admitted to such facility before the effective*
5 *date.”,*

6 *(2) by redesignating paragraph (2) as paragraph*
7 *(3) and inserting after paragraph (1) the following new*
8 *paragraph:*

9 *“(2)(A) Where the Secretary (i) determines that a*
10 *skilled nursing facility or intermediate care facility which is*
11 *certified for participation under this title no longer substan-*
12 *tially meets the provisions of section 1861(j) or section*
13 *1905(c), respectively, (ii) further determines that the facili-*
14 *ty’s deficiencies do not immediately jeopardize the health and*
15 *safety of its patients, and (iii) has given the facility a reason-*
16 *able opportunity to correct its deficiencies and, following that*
17 *period, has given reasonable notice to the facility and the*
18 *public, the Secretary may, in lieu of canceling immediately*
19 *the certification of the facility, notify the facility of the defi-*
20 *ciencies that form the basis of the determination to impose the*
21 *sanction under this paragraph, and of the date by which the*
22 *deficiencies must be corrected, which date may not be later*
23 *than one year after the date of the notice to the facility.*

24 *“(B) Payment under a State plan under this title, with*
25 *respect to the period established by the notice under subpara-*

1 graph (A) and prior to the correction of the deficiencies (as
 2 determined by the Secretary), may be made to such facility,
 3 at the Secretary's option, either (i) only for services provided
 4 to an individual admitted to the facility before the date of the
 5 notice, or (ii) for services to all eligible individuals during
 6 such period, but only after the Secretary is satisfied that the
 7 deficiencies have been corrected.

8 “(C) If the Secretary determines that the deficiencies
 9 specified in the notice under subparagraph (A) have not been
 10 corrected by the deadline stated in the notice, the Secretary
 11 shall cancel approval of the facility to participate in pro-
 12 grams under this title and title XVIII, in accordance with
 13 paragraph (1), as of the date by which the deficiencies were
 14 required to be corrected.”, and

15 (3) in paragraph (3), as redesignated—

16 (A) by striking out “that it no longer quali-
 17 fies as a skilled nursing facility or intermediate
 18 care facility for purposes of this title,” in the first
 19 sentence and inserting in lieu thereof “under this
 20 subsection”, and

21 (B) by striking out the second sentence.

22 **SEC. 115. HEALTH MAINTENANCE ORGANIZATION AND COM-**
 23 **PETITIVE MEDICAL PLAN SANCTIONS.**

24 (a) **CONTRACT TERMINATION; INTERMEDIATE SANC-**
 25 **TIONS.—**

1 (1) Section 1876(i)(1) (42 U.S.C.
2 1395mm(i)(1)) is amended—

3 (A) in the matter preceding subparagraph
4 (A), by striking out all that follows the semicolon
5 and inserting in lieu thereof “except that, if the
6 Secretary finds that the eligible organization hold-
7 ing any such contract—”;

8 (B) by striking out “or” at the end of sub-
9 paragraph (B);

10 (C) by striking out the period at the end of
11 subparagraph (C) and inserting in lieu thereof “,
12 or”;

13 (D) by adding after subparagraph (C) the
14 following new subparagraph:

15 “(D) no longer complies with the require-
16 ment of subsection (f)(1) or, where applicable,
17 with the alternative requirement of subsection
18 (f)(2)(B),”; and

19 (E) by adding below and one em to the left
20 of subparagraph (D) the following:

21 “the Secretary may at any time either—

22 “(i) terminate such contract (after such rea-
23 sonable notice of the deficiency and opportunity
24 for hearing to the eligible organization as he may
25 provide in regulations), or

“(ii) notwithstanding any other provision of this title or title XIX, if the Secretary determines that the organization’s deficiencies do not immediately jeopardize the health and safety of its patients, require the organization to close enrollment to individuals eligible for benefits under this title during a period beginning on the date of such determination and ending on the date that the Secretary is satisfied that the deficiency has been corrected, and deny payment under this title with respect to such period on behalf of any individual initially enrolled during such period under a contract under this section.”.

(2) Section 1902(i) (42 U.S.C. 1396a(i)), as amended by section 113 of this title, is further amended—

(A) in paragraph (1) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively,

(B) in paragraph (2) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(C) by inserting “(A)” after “(i)(1)”,

1 (D) by redesignating paragraphs (2), (3),
2 and (4) as subparagraphs (B), (C), and (D),
3 respectively,

4 (E) by striking out “paragraph (1)” each
5 place it appears and inserting in lieu thereof
6 “subparagraph (A)”, and

7 (F) by adding at the end thereof the follow-
8 ing new paragraph:

9 “(2) In addition to any other authority under State
10 law, where a State agency (A) determines that a health
11 maintenance organization with which it has a contract no
12 longer substantially meets the conditions of participation in
13 the program under its plan, and (B) further determines that
14 the organization’s deficiencies do not immediately jeopardize
15 the health and safety of its patients, the State agency may, in
16 lieu of terminating immediately its contract with the organi-
17 zation, require the organization to close its enrollment to indi-
18 viduals eligible for medical assistance under this title during
19 a period beginning on the date of such determination and
20 ending on the date that the State agency is satisfied that the
21 deficiency has been corrected, and deny payment under this
22 title with respect to such period on behalf of any individual
23 initially enrolled during such period under a contract under
24 this section.”.

1 (b) CIVIL MONETARY PENALTIES.—Section
 2 1128A(a) (42 U.S.C. 1320a-7a(a)), as amended by section
 3 102 of this title, is further amended—

4 (1) in paragraph (1) by redesignating subpara-
 5 graphs (A), (B), (C), and (D) as clauses (i), (ii), (iii),
 6 and (iv), respectively,

7 (2) in paragraph (2) by redesignating subpara-
 8 graphs (A), (B), (C), and (D) as clauses (i), (ii), (iii),
 9 and (iv), respectively,

10 (3) by redesignating paragraphs (1), (2), and (3),
 11 as subparagraphs (A), (B), and (C) respectively,

12 (4) in the matter following subparagraph (C) by
 13 striking “paragraph (3)” and inserting in lieu thereof
 14 “subparagraph (C)”,

15 (5) by inserting “(1)” after “(a)”, and

16 (6) by adding at the end thereof the following new
 17 paragraph:

18 “(2)(A) Any eligible organization (as defined in section
 19 1876(b)) and any health maintenance organization (as de-
 20 fined in section 1903(m)), that—

21 “(i) charges an individual entitled to benefits
 22 under title XVIII or to medical assistance under a
 23 State plan approved under title XIX an amount for an
 24 item or service that is in excess of the amount that
 25 may be charged under such title or plan,

1 “(ii) fails to provide any such individual medical-
2 ly indicated treatment that is covered under the con-
3 tract of such organization with the Secretary or the
4 State agency administering or supervising the admin-
5 istration of such plan, as the case may be,

6 “(iii) disenrolls any such individual in a manner
7 or for reasons not permitted under such title or plan,

8 “(iv) engages in any practice that would reason-
9 ably be expected to have the effect of excluding from
10 enrollment any such individual with a medical condi-
11 tion or history indicating the need for substantial med-
12 ical services in the future, or

13 “(v) misrepresents or falsifies any enrollment in-
14 formation provided to the Secretary or a State agency,
15 shall be subject to a civil money penalty as specified in sub-
16 paragraph (B) (in addition to any other penalties prescribed
17 by law).

18 “(B) The civil money penalties to be imposed under
19 subparagraph (A) are as follows:

20 “(i) For each item or service with respect to which
21 an excess charge is made (as described in subpara-
22 graph (A)(i)) an amount equal to twice the amount of
23 the excess charge, plus \$2,000.

“(ii) For each failure to provide treatment described in subparagraph (A)(ii), an amount not to exceed \$25,000 per patient.

“(iii) For each disenrollment described in subparagraph (A)(iii), an amount not to exceed \$15,000.

“(iv) For engaging in a practice described in subparagraph (A)(iv), an amount not to exceed \$100,000, plus an amount not to exceed \$15,000 for each individual excluded from enrollment by reason of such practice.

“(v) For each instance in which the Secretary or a State agency is given false information or a misrepresentation is made to the Secretary or a State agency (as described in subparagraph (A)(v)), an amount not to exceed \$100,000.”.

SEC. 116. AMENDMENT RELATING TO FRAUD INVOLVING MEDICAL CARE SUPPLEMENTAL INSURANCE.

Section 1882(d)(1) (42 U.S.C. 1395ss(d)(1)) is amended by striking out “knowingly or willfully” and inserting in lieu thereof “knowingly and willfully”.

SEC. 117. DENIAL OF MEDICAID PAYMENT TO STATES WHERE INFORMATION SUPPORTING CLAIMS IS NOT FURNISHED TO THE SECRETARY.

Section 1903(i) (42 U.S.C. 1396b(i)) is amended—

1 (1) *by striking out the period at the end of para-*
 2 *graph (7) and inserting “; or” instead, and*

3 (2) *by adding below paragraph (7) the following*
 4 *new paragraph:*

5 “(8) *with respect to any amount paid under the*
 6 *State plan to any individual or entity that has failed*
 7 *to furnish to the Secretary, upon request, information*
 8 *required to be furnished pursuant to this title or title*
 9 *XI or XVIII, unless the Secretary finds that there is*
 10 *good cause for such failure.”.*

11 **SEC. 118. AMENDMENTS TO UTILIZATION CONTROL REQUIRE-**
 12 **MENTS.**

13 (a) *IN GENERAL.*—Section 1903(g)(1) (42 U.S.C.
 14 1396b(g)(1)) *is amended by striking out “(whether or not*
 15 *such days are consecutive), during any fiscal year,” and in-*
 16 *serting instead “during any fiscal year (whether or not such*
 17 *days are consecutive) or during any consecutive stay (wheth-*
 18 *er or not during the same fiscal year,”.*

19 (b) *TECHNICAL AMENDMENT.*—Section 1903(7) (42
 20 U.S.C. 1396b(7)) *is redesignated section 1903(g)(7) and re-*
 21 *located immediately after section 1903(g)(6).*

22 **SEC. 119. PROHIBITION OF CERTAIN PHYSICIAN INCENTIVE**
 23 **PLANS.**

24 (a) *MAKING CERTAIN PLANS SUBJECT TO CIVIL*
 25 *MONETARY PENALTIES.*—Section 1128A (42 U.S.C.

1 1320a-7a), as amended by sections 102 and 115 of this title,
2 is further amended—

3 (1) by striking “subsection (a)” each place it ap-
4 pears and inserting “subsection (a) or (b)”,

5 (2) in subsection (f), by striking “subsection (d)”
6 and inserting “subsection (e)”,

7 (3) by redesignating subsections (b) through (j) as
8 subsections (c) through (k), respectively, and

9 (4) by inserting after subsection (a) the following
10 new subsection:

11 “(b)(1) If a physician, who is furnishing or ordering
12 services or supplies for a subsection (d) hospital (as defined
13 in section 1886(d)(1)(B))—

14 “(A)(i) fails to furnish or order medically neces-
15 sary services or supplies with respect to an individual
16 patient entitled to benefits under part A of title XVIII,
17 or

18 “(ii) fails to admit such an individual on the
19 basis of the amount of services or length of stay
20 required,

21 “(B) the failure adversely affects the health and
22 the safety of the individual, and

23 “(C) such hospital offers or pays any remunera-
24 tion, directly or indirectly, in cash or in kind, to such
25 physician based in whole or in part on the amount of

1 *services provided at such hospital or the length of stay*
 2 *in such hospital of those individual patients of the phy-*
 3 *sician who are entitled to benefits under such part,*
 4 *such physician shall be subject, in addition to any other*
 5 *remedy that may be prescribed by law, to a civil monetary*
 6 *penalty of not more than \$25,000 for each such patient.*

7 *“(2) Any subsection (d) hospital that offers or pays any*
 8 *remuneration under the circumstances described in para-*
 9 *graph (1) shall be subject, in addition to any other remedy*
 10 *that may be prescribed by law, to a civil monetary penalty of*
 11 *not more than \$25,000 for each such patient.*

12 *“(3) This subsection shall not apply to payments made*
 13 *by a health maintenance organization or a competitive medi-*
 14 *cal plan or by a subsection (d) hospital pursuant to a demon-*
 15 *stration project established by the Secretary under section*
 16 *402 of the Social Security Amendments of 1967.”.*

17 *(b) CONDITION OF PARTICIPATION.—*

18 *(1) Section 1866(a)(1) (42 U.S.C. 1395cc(a)(1))*
 19 *is amended—*

20 *(A) by striking “and” at the end of subpara-*
 21 *graph (J),*

22 *(B) by striking the period at the end of sub-*
 23 *paragraph (K) and inserting in lieu thereof “,*
 24 *and”, and*

(C) by inserting after subparagraph (K) the following new subparagraph:

“(L) in the case of a subsection (d) hospital (as defined in section 1886(d)(1)(B)), to provide the Secretary with a detailed description of any physician incentive plan established by the hospital and to make such description available for public inspection in accordance with regulations of the Secretary.”.

(2) Section 1128A(a)(1), as amended and redesignated by sections 102 and 115, is further amended—

(A) by striking “or” at the end of subparagraph (B) (as redesignated),

(B) by adding “or” at the end of subparagraph (C) (as added and redesignated),

(C) by adding at the end thereof the following new subparagraph:

“(D) fails to provide the Secretary with a description of a physician incentive plan of the hospital in accordance with section 1866(a)(1)(L);”, and

(D) in the matter following subparagraph (D)—

1 (i) by striking “subparagraph (C),”
 2 and inserting in lieu thereof “subparagraphs
 3 (C) and (D),”, and

4 (ii) by striking “given)” and inserting
 5 in lieu thereof “given, and \$15,000 for each
 6 failure to provide a description to the
 7 Secretary)”.

8 (c) *STUDY OF ADDITIONAL SANCTIONS.*—The Secre-
 9 tary of Health and Human Services shall develop and report
 10 to Congress, not later than January 1, 1988, on specific leg-
 11 islative changes that should be made to prohibit other physi-
 12 cian incentive plans (including plans of health maintenance
 13 organizations and competitive medical plans) that have the
 14 effect of pressuring physicians improperly to discharge pa-
 15 tients from hospitals before their discharge is medically ap-
 16 propriate or to reduce medically appropriate services.

17 **SEC. 120. AMENDMENTS TO ANTI-KICKBACK PROVISIONS.**

18 (a) *GROUP PURCHASING ARRANGEMENTS.*—Section
 19 1128B(b)(3), as amended and redesignated by section 103 of
 20 this title, is further amended—

21 (1) by striking out “and” at the end of subpara-
 22 graph (A),

23 (2) by striking out the period at the end of sub-
 24 paragraph (B) and inserting in lieu thereof “; and”,
 25 and

1 (3) by adding at the end thereof the following new
2 subparagraph:

3 “(C) any amount paid—

4 “(i) by a subsection (d) hospital (as defined
5 in section 1886(d)(1)(B)), any hospital that is lo-
6 cated in a State with a waiver in effect under sec-
7 tion 402 of the Social Security Amendments of
8 1967 or under section 1886(c), or any provider
9 paid on a risk basis under title XVIII or title
10 XIX to a group purchasing organization author-
11 ized to act as a purchasing agent for the hospital
12 or provider, or

13 “(ii) by a vendor of goods or services to a
14 group purchasing organization authorized to act
15 as a purchasing agent for a group of hospitals or
16 providers of the type described in clause (i) if—

17 “(I) the organization has a written
18 agreement with each such vendor and each
19 such hospital or provider to disclose all pay-
20 ments made to the organization by such ven-
21 dors, such hospitals, and such providers, and

22 “(II) the organization discloses to the
23 Secretary, participating hospitals, and par-
24 ticipating providers the amount of all pay-
25 ments to the organization by such vendors,

1 *hospitals, and providers (in such form and in*
 2 *such manner as the Secretary may require*
 3 *by regulation.”.*

4 *(b) WAIVER OF CERTAIN DEDUCTIBLES AND COIN-*
 5 *SURANCE AMOUNTS.—*

6 *(1) Section 1866(a)(1) (42 U.S.C. 1395cc(a)(1)),*
 7 *as amended by section 119 of this title, is further*
 8 *amended—*

9 *(A) by striking out “and” at the end of sub-*
 10 *paragraph (K),*

11 *(B) by striking out the period at the end of*
 12 *subparagraph (L) and inserting in lieu thereof “,*
 13 *and”, and*

14 *(C) by adding at the end thereof the follow-*
 15 *ing new subparagraph:*

16 *“(M) in the case of a subsection (d) hospital (as*
 17 *defined in section 1886(d)(1)(B)), to develop and*
 18 *adhere to written guidelines, with respect to the waiver*
 19 *of any deductible or coinsurance amount imposed*
 20 *under part A, that provide (i) that the amount of any*
 21 *such deductible or coinsurance amount waived shall be*
 22 *offset against bad debt for purposes of reimbursement*
 23 *under this title, (ii) that the waiver of any such deduct-*
 24 *ible or coinsurance amount shall apply uniformly to*
 25 *all individuals entitled to benefits under such part who*

1 are assigned to the same diagnosis-related group, and
2 (iii) in the case of the waiver of any such deductible or
3 coinsurance amount with respect to a diagnosis-related
4 group involving a procedure that may appropriately be
5 performed in an inpatient or an outpatient setting, that
6 preadmission review of individuals entitled to benefits
7 under such part who are to be admitted for such proce-
8 dure will be conducted in accordance with section
9 1154(a)(13).”.

10 (2) Section 1154(a) (42 U.S.C. 1320c-3(a)) is
11 amended by adding at the end thereof the following
12 new paragraph:

13 “(13) The organization shall, in the case of any
14 subsection (d) hospital (as defined in section
15 1886(d)(1)(B)) with a written policy of waiving the
16 deductible or coinsurance amounts imposed under part
17 A of title XVIII with respect to a diagnosis-related
18 group described in section 1866(a)(1)(M)(iii), perform
19 the review described in paragraph (1)(C) of this sub-
20 section on a preadmission basis for a substantial
21 sample of individuals proposed to be admitted with re-
22 spect to that group.”.

23 (3) Section 1128B(b)(3), as amended and redes-
24 igned by section 103 of this title, and as further
25 amended by subsection (a), is further amended—

1 (A) by striking out “and” at the end of sub-
2 paragraph (B),

3 (B) by striking out the period at the end of
4 subparagraph (C) and inserting in lieu thereof “;
5 and”, and

6 (C) by adding at the end thereof the follow-
7 ing new subparagraph:

8 “(D) any waiver of a deductible or coinsurance
9 amount imposed under part A of title XVIII that is—

10 “(i) made pursuant to a written plan under
11 section 1866(a)(1)(M).

12 “(ii) made by a hospital that is located in a
13 State with a waiver in effect under section 402 of
14 the Social Security Amendments of 1967 or
15 under section 1886(c)),

16 “(iii) made by a subsection (d) hospital (as
17 defined in section 1886(d)(1)(B)) prior to Sep-
18 tember 1, 1988—

19 “(I) with respect to a veteran who is de-
20 fined in section 101(2) of title 38, United
21 States Code, and

22 “(II) pursuant to a program established
23 prior to September 1, 1986, under which
24 such deductibles and coinsurance amounts
25 are waived with respect to such veterans.”.

1 (c) *STUDY.*—*The Comptroller General shall study the*
2 *effect of the requirements imposed by section 1866(a)(1)(M)*
3 *of the Social Security Act on competition in the health care*
4 *industry and on the access of medicare beneficiaries to health*
5 *care. The Comptroller General shall report the results of the*
6 *study to the Congress not later than two years after the date*
7 *with enactment of this Act, along with recommendations with*
8 *respect to the manner in which the provisions of section*
9 *1128B(b)(3)(D) should be modified.*

10 (d) *REGULATIONS.*—

11 (1) *The Secretary of Health and Human Serv-*
12 *ices, in consultation with the Attorney General, not*
13 *later than nine months after the date of the enactment*
14 *of this Act shall publish proposed regulations, and not*
15 *later than eighteen months after the date of the enact-*
16 *ment of this Act shall promulgate final regulations,*
17 *specifying payment practices that shall not be treated*
18 *as a criminal offense under section 1128B(b) of the*
19 *Social Security Act and shall not serve as the basis for*
20 *an exclusion under section 1128(b)(7) of such Act.*
21 *Any practices specified in regulations pursuant to the*
22 *preceding sentence shall be in addition to the practices*
23 *described in subparagraphs (A) through (D) of section*
24 *1128B(b)(3).*

1 (2) Section 1128B(b)(3), as amended and redes-
 2 ignated by section 103 of this title, and as further
 3 amended by subsections (a) and (b), is further
 4 amended—

5 (A) by striking out “and” at the end of sub-
 6 paragraph (C),

7 (B) by striking out the period at the end of
 8 subparagraph (D) and inserting in lieu thereof “;
 9 and”, and

10 (C) by adding at the end thereof the follow-
 11 ing new subparagraph:

12 “(E) any payment practice specified by the Sec-
 13 retary in regulations promulgated pursuant to section
 14 120(d)(1) of the Medicare and Medicaid Patient and
 15 Program Protection Act of 1986.”.

16 **SEC. 121. EFFECTIVE DATES.**

17 (a) *IN GENERAL.*—Except as provided in subsections
 18 (b), (c), (d), and (e), the amendments made by this title shall
 19 become effective at the end of the fourteen-day period begin-
 20 ning on the date of the enactment of this Act and shall not
 21 apply to administrative proceedings commenced before the
 22 end of such period.

23 (b) *MANDATORY MINIMUM EXCLUSIONS APPLY PRO-*
 24 *SPECTIVELY.*—Section 1128(c)(3)(B) of the Social Securi-
 25 ty Act (as amended by this title), which requires an exclusion

1 *of not less than five years in the case of certain exclusions,*
2 *shall not apply to exclusions based on convictions occurring*
3 *before the date of the enactment of this Act.*

4 (c) *EFFECTIVE DATE FOR CHANGES IN MEDICAID*
5 *LAW.—(1) The amendments made by sections 104 and*
6 *107(f) apply (except as provided under paragraph (2)) to*
7 *payments under title XIX of the Social Security Act for*
8 *calendar quarters beginning more than thirty days after the*
9 *date of the enactment of this Act.*

10 (2) *In the case of a State plan for medical assistance*
11 *under title XIX of the Social Security Act which the Secre-*
12 *tary of Health and Human Services determines requires*
13 *State legislation in order for the plan to meet the additional*
14 *requirements imposed by the amendments made by this title,*
15 *the State plan shall not be regarded as failing to comply with*
16 *the requirements of such title solely on the basis of its failure*
17 *to meet these additional requirements before the first day of*
18 *the first calendar quarter beginning after the close of the first*
19 *regular session of the State legislature that begins after the*
20 *date of the enactment of this Act.*

21 (3) *Subsection (j) of section 1128A of the Social Secu-*
22 *rity Act (as added by section 102(f) of this title) takes effect*
23 *on the date of the enactment of this Act.*

24 (d) *CLARIFICATION OF MEDICAID MORATORIUM.—*
25 *The amendments made by section 108 of this title shall apply*

1 *as though they were originally included in the enactment of*
 2 *section 2373(c) of the Deficit Reduction Act of 1984.*

3 (e) *TREATMENT OF CERTAIN DENIALS OF PAY-*
 4 *MENT.—For purposes of section 1128(b)(8)(B)(iii) of the*
 5 *Social Security Act (as amended by section 101 of this title),*
 6 *a person shall be considered to have been excluded from par-*
 7 *ticipation under a program under title XVIII if payment to*
 8 *the person has been denied under section 1862(d) of the*
 9 *Social Security Act, as in effect before the effective date spec-*
 10 *ified in subsection (a).*

11 **TITLE II—MEDICARE, MEDICAID, AND OTHER** 12 **AMENDMENTS**

13 **Subtitle A—Provisions Relating to Medicare**

14 **SEC. 201. ANNUAL RECALIBRATION OF PPS.**

15 (a) *ADJUSTMENTS OF DRG CLASSIFICATIONS AND*
 16 *WEIGHTING FACTORS.—Section 1886(d)(4)(C) of the*
 17 *Social Security Act is amended to read as follows:*

18 “(C)(i) *The Secretary shall adjust the DRG relative*
 19 *categories established under subparagraph (A) for discharges*
 20 *in fiscal year 1988 and at least once every fiscal year*
 21 *thereafter.*

22 “(ii) *The Secretary shall adjust the DRG relative*
 23 *weighting factors established under subparagraph (B)*
 24 *through a recalibration for discharges in fiscal year 1988*
 25 *and at least once every fiscal year thereafter.*

1 “(iii) The Secretary may from time to time reweight
2 individual DRG relative weighting factors established under
3 subparagraph (B) to reflect the changes and factors described
4 in clause (iv).

5 “(iv) The Secretary shall make the adjustments under
6 clauses (i), (ii), and (iii) to reflect changes in treatment pat-
7 terns, technology, and other factors which may change the
8 relative use of hospital resources.

9 “(v) As used in this subparagraph, the term—

10 “(I) ‘recalibration’ means an adjustment of DRG
11 relative weighting factors that is based on a uniform
12 method applied to all such weighting factors, reflects
13 the hospital resources used for each DRG relative cate-
14 gory in relation to all other DRG relative categories,
15 and becomes effective with respect to all such weighting
16 factors simultaneously; and

17 “(II) ‘reweighting’ means an adjustment of the
18 relative weighting factors of one or more DRG relative
19 categories to reflect changes in the relative use of hospi-
20 tal resources in the category or categories compared to
21 all other such categories, but which does not apply to
22 the weighting factors for all such categories.

23 “(vi)(I) The Secretary shall publish proposed and final
24 recalibrations made pursuant to clause (ii) in accordance
25 with subsection (e)(5).

1 “(II) *The Secretary shall publish any reweighting*
2 *made pursuant to clause (iii) in the Federal Register.*”.

3 (b) *PUBLICATION.*—(1) *Section 1886(e)(5)(A) of the*
4 *Social Security Act is amended by inserting “and proposed*
5 *recalibration under subsection (d)(4)(C)(ii)” after “para-*
6 *graph (4)”.*

7 (2) *Section 1886(e)(5)(B) of such Act is amended by*
8 *striking out “proposal” and inserting in lieu thereof “propos-*
9 *als” and by inserting “(4) and final recalibration under sub-*
10 *section (d)(4)(C)(ii)” after “such paragraph”.*

11 (c) *EFFECTIVE DATE.*—*The amendments made by this*
12 *section shall become effective on the date of the enactment of*
13 *this Act.*

14 **SEC. 202. REBASING PPS RATES FOR FISCAL YEAR 1988.**

15 (a) *IN GENERAL.*—*Section 1886(d)(3)(A) of the*
16 *Social Security Act (42 U.S.C. 1395ww(d)(3)(A)) is*
17 *amended to read as follows:*

18 “(A) *DETERMINING AVERAGE STANDARDIZED*
19 *AMOUNTS.*—

20 “(i) *FISCAL YEARS 1985 THROUGH 1987.*—

21 *The Secretary shall determine an average stand-*
22 *ardized amount for hospitals located in an urban*
23 *area within the United States and for hospitals*
24 *located in a rural area within the United States*
25 *and for hospitals located in an urban area and for*

1 *hospitals located in a rural area within each*
2 *region for each of the fiscal years 1985, 1986,*
3 *and 1987, equal to the respective average stand-*
4 *ardized amount computed for the previous fiscal*
5 *year under paragraph (2)(D) or under this clause,*
6 *increased for each of the fiscal years 1985 and*
7 *1986 by the applicable percentage increase under*
8 *subsection (b)(3)(B), and adjusted for fiscal year*
9 *1987 in accordance with the final determination*
10 *of the Secretary under subsection (e)(4), and ad-*
11 *justed to reflect the most recent case-mix data*
12 *available.*

13 “(ii) *FISCAL YEAR 1988.—*

14 “(I) *DETERMINING COSTS FOR BASE*
15 *PERIOD.—The Secretary shall determine the*
16 *operating costs per discharge for inpatient*
17 *hospital services, for hospitals located in an*
18 *urban area and for hospitals located in a*
19 *rural area within the United States, that*
20 *would have been allowable for cost reporting*
21 *periods beginning on or after October 1,*
22 *1983, and before October 1, 1984, under the*
23 *reimbursement principles in effect under this*
24 *title for cost reporting periods beginning on*
25 *or after October 1, 1982, and before Octo-*

1 ber 1, 1983 (without regard to the limits
2 imposed by subsections (a) and (b)).

3 “(II) *UPDATING FOR FISCAL YEAR*
4 1988.—The Secretary shall update each
5 amount determined under subclause (I) for
6 fiscal year 1988 by—

7 “(aa) updating for fiscal year
8 1987 by the estimated average rate of
9 change in hospital costs industry-wide
10 between the cost reporting period used
11 under such subclause and fiscal year
12 1987, adjusting to reflect the most
13 recent case-mix data available, and

14 “(bb) adjusting for fiscal year
15 1988 in accordance with the final deter-
16 mination of the Secretary under subsec-
17 tion (e)(4).

18 “(III) *STANDARDIZING.*—The Secre-
19 tary shall standardize the amounts deter-
20 mined under subclause (II) in accordance
21 with paragraph (2)(C).

22 “(IV) *COMPUTING URBAN AND RURAL*
23 *AVERAGES.*—The Secretary shall compute
24 an average of the standardized amounts de-
25 termined under subclause (III) for all sub-

1 *section (d) hospitals located in an urban area*
2 *and for all subsection (d) hospitals located in*
3 *a rural area within the United States. Such*
4 *averages shall be computed on the basis of*
5 *discharge weighting rather than hospital*
6 *weighting, making appropriate adjustments*
7 *to ensure that computation on such basis*
8 *does not result in total payments under this*
9 *section that are greater or less than the total*
10 *payments that would have been made under*
11 *this section but for this sentence, and making*
12 *appropriate changes in the manner of deter-*
13 *mining the reductions under subparagraph*
14 *(C)(ii).*

15 “(iii) *FISCAL YEARS 1989 AND THEREAF-*
16 *TER.—The Secretary shall determine an average*
17 *standardized amount for hospitals located in an*
18 *urban area and for hospitals located in a rural*
19 *area of the United States for fiscal years after*
20 *1988 equal to the respective average standardized*
21 *amount computed for the previous fiscal year*
22 *under clause (ii) or under this clause, adjusted in*
23 *accordance with the final determination of the*
24 *Secretary under subsection (e)(4), and adjusted to*
25 *reflect the most recent case-mix data available.”.*

1 (b) *BUDGET NEUTRALITY.*—

2 (1) *Section 1886(e)(1)(B) of such Act is*
3 *amended—*

4 (A) *by redesignating clauses (i) and (ii) as*
5 *subclauses (I) and (II), respectively,*

6 (B) *by inserting “(i)” after “(B)”*, and

7 (C) *by adding at the end thereof the follow-*
8 *ing new clause:*

9 “(ii) *For discharges occurring in fiscal year 1988, the*
10 *Secretary shall provide for such equal proportional adjust-*
11 *ment in each of the average standardized amounts otherwise*
12 *computed for that fiscal year as may be necessary to assure*
13 *that—*

14 “(I) *the aggregate payment amounts otherwise*
15 *provided under subsections (d)(1)(A)(iii) and (d)(5) for*
16 *that fiscal year for operating costs of inpatient hospital*
17 *services of hospitals,*
18 *are not greater or less than—*

19 “(II) *the payment amounts that would have been*
20 *payable for such services for those same hospitals for*
21 *that fiscal year but for the enactment of the amend-*
22 *ments made by section 202 of the Medicare and Medic-*
23 *aid Patient and Program Protection Act of 1986.”*

24 (2) *Section 1886(d)(3)(C)(i) of such Act is*
25 *amended—*

(A) by striking “FISCAL YEAR 1985” in the caption and inserting in lieu thereof “FISCAL YEAR 1988”, and

(B) by striking “fiscal year 1985” and inserting in lieu thereof “fiscal year 1988”.

(3) There shall be no administrative or judicial review under section 1878 of the Social Security Act or otherwise with respect to the determination of the requirement, or the proportional amount, of any adjustment effected pursuant to section 1886(e)(1)(B)(ii) of such Act.

SEC. 203. REPORTING OF HOSPITAL COSTS.

(a) COST REPORTING REQUIRED THROUGH FISCAL YEAR 1993.—Section 1886(f)(1) of the Social Security Act (42 U.S.C. 1395ww(f)(1)) is amended by striking out “1988” and inserting in lieu thereof “1993”.

(b) LIMITATION ON CHANGES.—During the period beginning with the date of the enactment of this Act and ending with the date on which the Secretary of Health and Human Services (in this section referred to as the “Secretary”) submits the report required by subsection (c), the Secretary may modify the system for the reporting of hospital costs that is maintained pursuant to section 1886(f)(1) of the Social Security Act and is in effect on the date of the enactment of this

1 *Act only to the extent necessary to reflect amendments made*
 2 *to title XVIII of such Act.*

3 (c) *REPORT.*—

4 (1) *Not later than one year after the date of the*
 5 *enactment of this Act, the Secretary shall submit to the*
 6 *Congress a report recommending ways in which the*
 7 *system for reporting hospital costs that is maintained*
 8 *pursuant to section 1886(f)(1) of the Social Security*
 9 *Act may be modified in order to provide information*
 10 *that is appropriate for the improvement of the prospec-*
 11 *tive payment system.*

12 (2) *The report required by paragraph (1) shall be*
 13 *prepared in consultation with the Prospective Payment*
 14 *Assessment Commission, the General Accounting*
 15 *Office, the Office of Technology Assessment, and repre-*
 16 *sentatives of appropriate research, accounting, and*
 17 *health-care organizations.*

18 **SEC. 204. COVERAGE OF HOSPITALS IN PUERTO RICO UNDER A**
 19 **DRG PROSPECTIVE PAYMENT SYSTEM.**

20 (a) *IN GENERAL.*—*Section 1886(d) of the Social Se-*
 21 *curity Act (42 U.S.C. 1395ww(d)) is amended by adding at*
 22 *the end the following new paragraph:*

23 “(9)(A) *Notwithstanding section 1814(b) but subject to*
 24 *the provisions of section 1813, the amount of the payment*
 25 *with respect to the operating costs of inpatient hospital serv-*

ices of a subsection (d) Puerto Rico hospital for inpatient hospital discharges in a fiscal year beginning on or after October 1, 1987, is equal to the sum of—

“(i) 75 percent of the Puerto Rico adjusted DRG prospective payment rate (determined under subparagraph (B) or (C)) for such discharges, and

“(ii) 25 percent of the discharge-weighted average of—

“(I) the national adjusted DRG prospective payment rate (determined under paragraph (3)(D)) for hospitals located in an urban area, and

“(II) such rate for hospitals located in a rural area, for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels.

As used in this section, the term ‘subsection (d) Puerto Rico hospital’ means a hospital that is located in Puerto Rico and that would be a subsection (d) hospital (as defined in paragraph (1)(B)) if it were located in one of the fifty States.

“(B) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge in fiscal year 1988 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this title. Such rate

1 *shall be determined for such hospitals located in urban or*
2 *rural areas within Puerto Rico, as follows:*

3 “(i) *The Secretary shall determine the allowable*
4 *operating costs per discharge for inpatient hospital*
5 *services, for hospitals located in an urban area and for*
6 *hospitals located in a rural area within Puerto Rico*
7 *for the most recent cost reporting period for which data*
8 *are available (taking into account the limits imposed*
9 *by subsections (a) and (b)).*

10 “(ii) *The Secretary shall update each amount de-*
11 *termined under clause (i) for fiscal year 1988 by—*

12 “(I) *updating for fiscal year 1987 by the es-*
13 *timated average rate of change of hospital costs*
14 *industry-wide between the cost reporting period*
15 *used under such clause and fiscal year 1987, and*
16 *adjusting to reflect the most recent case-mix data*
17 *available, and*

18 “(II) *projecting for fiscal year 1988 by the*
19 *applicable percentage increase under subsection*
20 *(b)(3)(B) for fiscal year 1988.*

21 “(iii) *The Secretary shall standardize the amount*
22 *determined under clause (ii) for each hospital by—*

23 “(I) *excluding an estimate of indirect medi-*
24 *cal education costs,*

1 “(II) adjusting for variations among hospi-
2 tals by area in the average hospital wage level,

3 “(III) adjusting for variations in case mix
4 among hospitals, and

5 “(IV) excluding an estimate of the additional
6 payments to certain subsection (d) Puerto Rico
7 hospitals to be made under subparagraph (D)(i).

8 “(iv) The Secretary shall compute an average of
9 the standardized amounts determined under clause (iii)
10 for all hospitals located in an urban area and for all
11 hospitals located in a rural area (as such terms are de-
12 fined in paragraph (2)(D)). Such averages shall be
13 computed on the basis of discharge weighting rather
14 than hospital weighting, making appropriate adjust-
15 ments to ensure that computation on such basis does
16 not result in total payments under this section that are
17 greater or less than the total payments that would have
18 been made under this section but for this sentence, and
19 making appropriate changes in the manner of deter-
20 mining the reductions under clause (v) relating to out-
21 lier payments.

22 “(v)(I) The Secretary shall reduce the average
23 standardized amount by a proportion equal to the pro-
24 portion (estimated by the Secretary) of the amount of
25 payments under this paragraph which are additional

1 *payments described in subparagraph (D)(i) (relating to*
2 *outlier payments).*

3 *“(II) The reduction under this clause shall be*
4 *made independently for each grouping of subsection (d)*
5 *Puerto Rico hospitals for which a separate average*
6 *standardized amount is established under clause (iv).*
7 *Each reduction shall be based on the amount of outlier*
8 *payments which will be made to that grouping of*
9 *hospitals.*

10 *“(vi) For each discharge classified within a diag-*
11 *nosis-related group for hospitals located in an urban or*
12 *rural area, respectively, the Secretary shall establish a*
13 *Puerto Rico DRG prospective payment rate equal to*
14 *the product of—*

15 *“(I) the average standardized amount (com-*
16 *puted under clause (iv) and reduced under clause*
17 *(v)) for hospitals located in an urban or rural*
18 *area, respectively, and*

19 *“(II) the weighting factor (determined under*
20 *paragraph (4)(B)) for that diagnosis-related*
21 *group.*

22 *“(vii) The Secretary shall adjust the proportion*
23 *(as estimated by the Secretary from time to time) of*
24 *hospitals’ costs which are attributable to wages and*
25 *wage-related costs, of the Puerto Rico DRG prospective*

1 *payment rate computed under clause (vi) for area dif-*
2 *ferences in hospital wage levels by a factor (established*
3 *by the Secretary) reflecting the relative hospital wage*
4 *level in the geographic area of the hospital compared to*
5 *the Puerto Rico average hospital wage level.*

6 *“(C) The Secretary shall determine a Puerto Rico ad-*
7 *justed DRG prospective payment rate, for each inpatient hos-*
8 *pital discharge after fiscal year 1988 involving inpatient hos-*
9 *pital services of a subsection (d) Puerto Rico hospital for*
10 *which payment may be made under part A of this title. Such*
11 *rate shall be determined for hospitals located in urban or*
12 *rural areas within Puerto Rico as follows:*

13 *“(i) The Secretary shall compute an average*
14 *standardized amount for hospitals located in an urban*
15 *area and for hospitals located in a rural area equal to*
16 *the respective average standardized amount computed*
17 *for the previous fiscal year under subparagraph (B)(iv)*
18 *or under this clause, increased for fiscal year 1989 by*
19 *the applicable percentage increase under subsection*
20 *(b)(3)(B), and adjusted for subsequent fiscal years in*
21 *accordance with the final determination of the Secre-*
22 *tary under subsection (e)(4), and adjusted to reflect the*
23 *most recent case-mix data available.*

24 *“(ii)(I) The Secretary shall reduce the average*
25 *standardized amount by a proportion equal to the pro-*

1 portion (estimated by the Secretary) of the amount of
2 payments under this paragraph which are additional
3 payments described in subparagraph (D)(i) (relating to
4 outlier payments).

5 “(II) The reduction under this clause shall be
6 made independently for each grouping of subsection (d)
7 Puerto Rico hospitals for which a separate average
8 standardized amount is established under clause (ii).
9 Each reduction shall be based on the amount of outlier
10 payments which will be made to that grouping of
11 hospitals.

12 “(iii) For each discharge classified within a diag-
13 nosis-related group for hospitals located in an urban or
14 rural area, respectively, the Secretary shall establish a
15 Puerto Rico DRG prospective payment rate equal to
16 the product of—

17 “(I) the average standardized amount (com-
18 puted under clause (i) and reduced under clause
19 (ii)) for hospitals located in an urban or rural
20 area, respectively, and

21 “(II) the weighting factor (determined under
22 paragraph (4)(B)) for that diagnosis-related
23 group.

24 “(iv) The Secretary shall adjust the proportion
25 (as estimated by the Secretary from time to time) of

1 *hospitals' costs which are attributable to wages and*
2 *wage-related costs, of the Puerto Rico DRG prospective*
3 *payment rate computed under clause (iii) for area dif-*
4 *ferences in hospital wage levels by a factor (established*
5 *by the Secretary) reflecting the relative hospital wage*
6 *level in the geographic area of the hospital compared to*
7 *the Puerto Rican average hospital wage level.*

8 *“(D) The following provisions of paragraph (5) shall*
9 *apply to subsection (d) Puerto Rico hospitals receiving pay-*
10 *ment under this paragraph in the same manner and to the*
11 *extent as they apply to subsection (d) hospitals receiving pay-*
12 *ment under this subsection:*

13 *“(i) Subparagraph (A) (relating to outlier pay-*
14 *ments).*

15 *“(ii) Subparagraph (B) (relating to payments for*
16 *indirect medical education costs), except that for this*
17 *purpose the sum of the amount determined under sub-*
18 *paragraph (A) of this paragraph and the amount paid*
19 *to the hospital under clause (i) of this subparagraph*
20 *shall be substituted for the sum referred to in para-*
21 *graph (5)(B)(i)(I).*

22 *“(iii) Subparagraph (C)(ii) (relating to sole com-*
23 *munity hospitals).*

24 *“(iv) Subparagraph (C)(iii) (relating to excep-*
25 *tions and adjustments).*

1 “(v) Subparagraph (E) (relating to payments for
2 costs of certified registered nurse anesthetists).

3 “(vi) Subparagraph (F) (relating to disproportion-
4 ate share payments), except that for this purpose the
5 sum described in clause (ii) of this subparagraph shall
6 be substituted for the sum referred to in paragraph
7 (5)(F)(ii)(I).

8 “(E) The provisions of subsection (h) (relating to pay-
9 ments to hospitals for direct costs of medical education) shall
10 apply to subsection (d) Puerto Rico hospitals receiving pay-
11 ment under this paragraph in the same manner and to the
12 extent as they apply to subsection (d) hospitals receiving pay-
13 ment under this subsection, except that the limitations set
14 forth in subparagraph (E) thereof (relating to foreign medical
15 graduates) shall not apply.”.

16 (b) BUDGET NEUTRALITY.—Section 1886(e)(5) of the
17 Social Security Act is amended by adding at the end thereof
18 the following new subparagraph:

19 “(C) For discharges occurring in fiscal year 1988, the
20 Secretary shall provide for such equal proportional adjust-
21 ment in each of the average standardized amounts otherwise
22 computed under subsection (d)(3) for that fiscal year as may
23 be necessary to assure that—

24 “(i) the aggregate payment amounts otherwise
25 provided under subsections (d)(1)(A)(iii), (d)(5), and

1 (d)(8) for that fiscal year for operating costs of inpa-
 2 tient hospital services of subsection (d) hospitals and
 3 subsection (d) Puerto Rico hospitals,
 4 are not greater or less than—

5 “(ii) the payment amounts that would have been
 6 payable for such services for those same hospitals for
 7 that fiscal year but for the enactment of the amend-
 8 ments made by section 204 of the Medicare and Medic-
 9 aid Patient and Program Protection Act of 1986.”.

10 (c) *CONFORMING AMENDMENTS.*—

11 (1) Section 1886(d)(5)(A)(i) of such Act is
 12 amended by inserting “or a subsection (d) Puerto Rico
 13 hospital” after “subsection (d) hospital”.

14 (2) The first sentence of section 1886(d)(5)(C)(i)
 15 of such Act is amended by inserting “(other than under
 16 paragraph (9))” after “established under this sub-
 17 section”.

18 (d) *EFFECTIVE DATE.*—The amendments made by this
 19 section shall apply to discharges occurring on or after Octo-
 20 ber 1, 1987.

21 (e) *STUDY.*—The Secretary of Health and Human
 22 Services shall conduct a study of whether the costs of nonla-
 23 bor items, such as equipment and supplies, to subsection (d)
 24 Puerto Rico hospitals justify a special adjustment of the pay-
 25 ments made to such hospitals under section 1886(d)(9) of the

1 *Social Security Act. The Secretary shall submit the results*
2 *of the study to the Congress not later than one year after the*
3 *date of the enactment of this Act.*

4 **SEC. 205. RECLASSIFICATION OF CERTAIN DRG'S.**

5 (a) *ESTABLISHMENT OF SEPARATE DRG.*—The
6 *Secretary of Health and Human Services (in this section*
7 *referred to as the "Secretary") shall establish under section*
8 *1886(d)(4)(A) of Social Security Act a separate diagnosis-*
9 *related group with respect to the implantation of penile*
10 *prostheses.*

11 (b) *ADJUSTMENT OF CERTAIN DRG'S.*—The *Secre-*
12 *tary shall make such adjustments to the diagnosis-related*
13 *groups established under such section with respect to the im-*
14 *plantation of cardiac pacemakers as are necessary to differ-*
15 *entiate between procedures involving the implantation of*
16 *single-chamber devices and procedures involving the implan-*
17 *tation of dual-chamber or functionally similar devices.*

18 (c) *BUDGET NEUTRALITY.*—Subsections (a) and (b)
19 *shall be implemented in a manner that ensures that total pay-*
20 *ments under section 1886 of the Social Security Act are not*
21 *increased or decreased by reason of the reclassifications and*
22 *adjustments required by such subsections.*

23 (d) *EFFECTIVE DATE.*—The changes in the classifica-
24 *tion system under section 1886(d)(4)(A) of the Social Secu-*
25 *rity Act that are required by subsections (a) and (b) shall be*

1 *effective with respect to discharges occurring on or after Octo-*
2 *ber 1, 1987 and before October 1, 1989.*

3 **SEC. 206. MODIFICATION OF PPS OUTLIERS.**

4 (a) *IN GENERAL.*—Section 1886(d)(3)(B) of the
5 *Social Security Act (42 U.S.C. 1395ww(d)(3)(B)) is*
6 *amended—*

7 (1) *by inserting “(i)” after “(B)”, and*

8 (2) *by adding at the end thereof the following new*
9 *clause:*

10 “(ii) *The reduction under this subparagraph shall be*
11 *made independently for each grouping of hospitals for which*
12 *a separate standardized amount is established under subpara-*
13 *graph (A). Each reduction shall be based on the amount of*
14 *outlier payments which will be made to that grouping of hos-*
15 *pitals.”.*

16 (b) *EFFECTIVE DATE.*—The amendment made by sub-
17 section (a) shall apply to discharges occurring on or after
18 October 1, 1987.

19 **SEC. 207. BURN OUTLIER STUDY; PAYMENT ADJUSTMENT.**

20 (a) *STUDY.*—The Prospective Payment Assessment
21 Commission (in this subsection referred to as the “Commis-
22 sion”) shall conduct a study of possible modifications to the
23 prospective payment system established under section
24 1886(d) of the Social Security Act that will provide more
25 adequate and appropriate payments with respect to burn out-

1 *lier cases, including a recommendation with respect to wheth-*
2 *er separate payment rates should be established for burn*
3 *center hospitals. The Commission shall report the results of*
4 *the study to the Congress not later than April 1, 1987.*

5 *(b) PAYMENT ADJUSTMENT.—*

6 *(1) Section 1886(d)(5)(A)(iii) of the Social*
7 *Security Act (42 U.S.C. 1395ww(d)(5)(A)(iii)) is*
8 *amended—*

9 *(A) by inserting “(I)” after “(iii)”, and*

10 *(B) by adding at the end thereof the follow-*
11 *ing new subclause:*

12 *“(II) In the case of any burn-related discharge*
13 *described in clause (i) or (ii), the amount of the addi-*
14 *tional payment under such clause shall equal 80 per-*
15 *cent of the cost of care beyond the applicable cutoff*
16 *point.”.*

17 *(2) Subclause (II) of section 1886(d)(5)(A)(iii) of*
18 *the Social Security Act shall be implemented in a*
19 *manner that ensures that total payments under section*
20 *1886 of such Act are not increased or decreased by*
21 *reason of the adjustments required by such subclause.*

22 *(3) The amendments made by paragraph (1) shall*
23 *apply to discharges occurring on or after October 1,*
24 *1986, and before the Secretary of Health and Human*

Services implements a payment modification based upon the study required by subsection (a).

SEC. 208. SOLE COMMUNITY PROVIDER EXTENSION.

(a) *EXTENSION*.—Section 1886(d)(5)(C)(ii) of the Social Security Act (42 U.S.C. 1395(d)(5)(C)(ii)) is amended by striking “, and before October 1, 1986”.

(b) *STUDY*.—The Secretary of Health and Human Services shall conduct a study of new methods of making payment under title XVIII of the Social Security Act that appropriately address the problems of sole community hospitals and other low-volume rural hospitals. The Secretary shall report the results of the study to the Congress not later than one year after the date of the enactment of this Act.

SEC. 209. IMPACT ANALYSES OF MEDICARE AND MEDICAID REGULATIONS ON SMALL RURAL HOSPITALS.

(a) *REGULATORY IMPACT ANALYSES*.—Section 1102 of the Social Security Act (42 U.S.C. 1302) is amended—

(1) by inserting “(a)” after the section designation; and

(2) by adding at the end thereof the following new subsection:

“(b)(1) Whenever the Secretary publishes general notice of proposed rulemaking for any regulation proposed under title XVIII, title XIX, or part B of this title that may have a significant impact on a substantial number of small rural

1 hospitals, the Secretary shall prepare and make available for
2 public comment an initial regulatory impact analysis. Such
3 analysis shall describe the impact of the proposed regulation
4 on such hospitals and shall set forth, with respect to small
5 rural hospitals, the matters required under section 603 of title
6 5, United States Code, to be set forth with respect to small
7 entities. The initial regulatory impact analysis or a summa-
8 ry shall be published in the Federal Register at the time of
9 the publication of general notice of proposed rulemaking for
10 the regulation.

11 “(2) Whenever the Secretary promulgates a final ver-
12 sion of a regulation with respect to which an initial regula-
13 tory impact analysis is required by paragraph (1), the Secre-
14 tary shall prepare a final regulatory impact analysis for such
15 final rule. Such analysis shall set forth, with respect to small
16 rural hospitals, the matters required under section 604 of title
17 5, United States Code, to be set forth with respect to small
18 entities. The Secretary shall make copies of the final regula-
19 tory impact analysis available to the public and shall publish
20 in the Federal Register at the time of publication of the final
21 rule a statement describing how the public may obtain such
22 copies.

23 “(3) If a regulatory flexibility analysis is required by
24 chapter 6 of title 5, United States Code, for a regulation to

1 *which this subsection applies, such analysis shall specifically*
 2 *address the impact of the regulation on small rural hospitals.*

3 “(4) *For purposes of this subsection, the term ‘small*
 4 *rural hospital’ means any hospital that is located in a rural*
 5 *area and is either a sole community provider or has 50 or*
 6 *fewer beds.’”*

7 (b) *EFFECTIVE DATE.*—*The amendments made by*
 8 *subsection (a) shall apply to regulations proposed after the*
 9 *date of the enactment of this Act.*

10 ***SEC. 210. REGIONAL REFERRAL CENTERS FOR STATES PREVI-***
 11 ***OUSLY UNDER WAIVER.***

12 *In the case of a hospital that—*

13 (1) *is located in a State with respect to which a*
 14 *waiver under section 1886(c) of the Social Security*
 15 *Act or section 402 of the Social Security Amendments*
 16 *of 1967 terminated on December 31, 1985, and*

17 (2) *makes application pursuant to section*
 18 *1886(d)(5)(C)(i) of such Act for reclassification as a*
 19 *rural referral center,*

20 *the Secretary of Health and Human Services shall make the*
 21 *initial determination with respect to such reclassification on*
 22 *the basis of data for the 9-month period ending Septem-*
 23 *ber 30, 1986.*

1 **SEC. 211. PSYCHOLOGISTS' SERVICES.**

2 (a) *IN GENERAL.*—Section 1861(b)(3) of the Social
3 Security Act is amended by inserting “(including a clinical
4 psychologist (as defined by the Secretary))” after “others”
5 the first place it appears.

6 (b) *EFFECTIVE DATE.*—The amendment made by this
7 section shall be effective with respect to services performed on
8 or after the date of the enactment of this Act.

9 **SEC. 212. CORRECTION TO EFFECTIVE DATE OF PROVISIONS AF-**
10 **FFECTING HOSPITAL PARTICIPATION IN CHAMPUS**
11 **AND CHAMPVA.**

12 (a) *IN GENERAL.*—Section 9122(b) of the Consolidat-
13 ed Omnibus Budget Reconciliation Act of 1985 is amended
14 by striking out “to agreements entered into or renewed on or
15 after the date of the enactment of this Act, but shall apply
16 only”.

17 (b) *EFFECTIVE DATE.*—The amendment made by sub-
18 section (a) shall be effective as if included in the enactment of
19 the Consolidated Omnibus Budget Reconciliation Act of
20 1985.

21 **SEC. 213. COORDINATION AND OVERSIGHT OF PPS QUALITY**
22 **EVALUATIONS.**

23 (a) *IN GENERAL.*—The Secretary of Health and
24 Human Services (in this section referred to as the “Secre-
25 tary”) shall designate a single office to coordinate and over-
26 see the activities of the Department of Health and Human

1 *Services (in this section referred to as the “Department”)*
2 *relating to the evaluation of the impact of the prospective pay-*
3 *ment system established under section 1886 of the Social Se-*
4 *curity Act on the quality of health care provided to medicare*
5 *beneficiaries.*

6 (b) *DUTIES.—The duties of the office designated by the*
7 *Secretary under this section (relating to the quality of health*
8 *care provided to medicare beneficiaries) shall include—*

9 (1) *assessing the feasibility and costs of alterna-*
10 *tive studies in relation to their importance;*

11 (2) *developing (in consultation with the task force*
12 *appointed pursuant to subsection (c)) an annual eval-*
13 *uation agenda;*

14 (3) *recommending an annual evaluation budget;*

15 (4) *identifying the most appropriate organization-*
16 *al sponsors for specific studies;*

17 (5) *recommending the most appropriate funding*
18 *mechanisms;*

19 (6) *recommending funding levels for individual*
20 *studies;*

21 (7) *overseeing and coordinating access to needed*
22 *data;*

23 (8) *overseeing and coordinating changes in data*
24 *systems to enhance the ability to evaluate health care*
25 *quality;*

1 (9) reviewing the content of specific studies for
2 their scientific validity; and

3 (10) maintaining a clearinghouse for both public
4 and private sector studies.

5 (c) *TASK FORCE*.—The Secretary shall establish a task
6 force to assist in the development of—

7 (1) the annual evaluation agenda required under
8 subsection (b)(2), and

9 (2) the establishment of priorities under subsec-
10 tion (b) with respect to the various evaluations and
11 studies of the Department.

12 The task force shall include representatives of interested exec-
13 utive and legislative branch agencies, medicare beneficiary
14 groups, and health care organizations.

15 (d) *DEVELOPMENT OF EVALUATION AGENDA*.—The
16 Secretary shall develop the initial evaluation agenda required
17 by subsection (b)(2) not later than one year after the date of
18 the enactment of this Act.

19 (e) *REPORT*.—The Secretary shall report to the Con-
20 gress not less than once each year with respect to the activi-
21 ties coordinated under this section. Such report shall include
22 a review of the annual evaluation agenda established under
23 subsection (b)(2), an assessment of accomplishments, and
24 recommendations with respect to areas in which additional
25 data or analysis are needed.

1 **SEC. 214. REFINEMENT OF PROSPECTIVE PAYMENT SYSTEM.**

2 (a) *DEVELOPMENT OF LEGISLATIVE PROPOSAL.—*

3 *The Secretary of Health and Human Services shall develop*
 4 *and submit to Congress a specific legislative proposal to im-*
 5 *prove the classification and payment system under section*
 6 *1886(d) of the Social Security Act and the system for pay-*
 7 *ment of outliers under section 1886(d)(5)(A) of such Act in*
 8 *order to assure that the amount of payment per discharge*
 9 *approximates the reasonable cost of medically necessary care*
 10 *provided in an efficient manner for individual patients or*
 11 *classes of patients with similar conditions.*

12 (b) *ACCOUNTING FOR SEVERITY OF ILLNESS.—In*
 13 *developing the proposal, the Secretary shall account for vari-*
 14 *ations in severity of illness and case complexity which are*
 15 *not adequately accounted for by the current classification and*
 16 *payment system.*

17 (c) *DEADLINE.—The proposal shall be submitted to*
 18 *Congress by not later than January 1, 1988.*

19 **SEC. 215. REVIEW OF STANDARDS FOR MEDICARE CONDITIONS**
 20 **OF PARTICIPATION FOR ASSURING QUALITY OF**
 21 **INPATIENT HOSPITAL SERVICES.**

22 *The Secretary of Health and Human Services shall ar-*
 23 *range for a study of the adequacy of the standards used for*
 24 *hospitals, for purposes of meeting the conditions of participa-*
 25 *tion under title XVIII of the Social Security Act, in assur-*
 26 *ing the quality of services furnished in the hospitals. The*

1 *Secretary shall report to Congress on the results of the study*
 2 *by not later than 2 years after the date of the enactment of*
 3 *this Act.*

4 **SEC. 216. STUDY OF PAYMENT FOR ADMINISTRATIVELY NECES-**
 5 **SARY DAYS.**

6 (a) *IN GENERAL.*—*The Secretary of Health and*
 7 *Human Services shall conduct a study—*

8 (1) *to determine—*

9 (A) *the extent to which costs of hospitals at-*
 10 *tributable to administratively necessary days have*
 11 *been incorporated into payments under section*
 12 *1886(d) of the Social Security Act, and*

13 (B) *to the extent they have been, the extent*
 14 *to which the distribution among hospitals of pay-*
 15 *ments under such section relating to such costs ac-*
 16 *tually reflects such hospitals' costs for administra-*
 17 *tively necessary days; and*

18 (2) *to determine whether a payment should be*
 19 *made (in a budget-neutral manner under title XVIII*
 20 *of such Act to hospitals receiving payments under sec-*
 21 *tion 1886(d) of such Act) to a hospital for administra-*
 22 *tively necessary days, separate from the per-discharge*
 23 *and outlier payments made under such section.*

24 (b) **ADMINISTRATIVELY NECESSARY DAYS DE-**
 25 **FINED.**—*In this section, an “administratively necessary*

1 day'' is a day of continued inpatient hospital stay, for an
 2 individual entitled to benefits under part A of title XVIII of
 3 the Social Security Act, necessitated by a delay in obtaining
 4 placement for the individual in a skilled nursing facility.

5 (c) *CONSIDERATIONS IN CONDUCTING STUDY.*—In
 6 conducting the study, the Secretary shall consider—

7 (1) the financial impact of current law on certain
 8 hospitals (or hospitals in certain locations) due to diffi-
 9 culties in arranging for appropriate post-hospital care,
 10 such as difficulties resulting from a shortage of beds in
 11 skilled nursing facilities where those hospitals are lo-
 12 cated, and

13 (2) the risk of inappropriate discharge to a non-
 14 institutional or inappropriate institutional setting of
 15 individuals who need post-hospital services in a skilled
 16 nursing facility.

17 (d) *REPORT ON STUDY.*—The Secretary shall report to
 18 Congress on the results of the study not later than Janu-
 19 ary 1, 1988.

20 **SEC. 217. DEVELOPMENT OF UNIFORM NEEDS ASSESSMENT**
 21 **INSTRUMENT.**

22 (a) *DEVELOPMENT.*—The Secretary of Health and
 23 Human Services shall develop a uniform needs assessment
 24 instrument that—

25 (1) evaluates—

1 (A) the functional capacity of an individual,

2 (B) the nursing and other care requirements

3 of the individual to meet health care needs and to

4 assist with functional incapacities, and

5 (C) the social and familial resources avail-

6 able to the individual to meet those requirements;

7 and

8 (2) can be used by discharge planners, hospitals,

9 nursing facilities, other health care providers, and

10 fiscal intermediaries in evaluating an individual's need

11 for post-hospital extended care services, home health

12 services, and long-term care services of a health-related

13 or supportive nature.

14 (b) *ADVISORY PANEL.*—The Secretary shall develop

15 the instrument in consultation with an advisory panel, ap-

16 pointed by the Secretary, that includes experts in the delivery

17 of post-hospital extended care services, home health services,

18 and long-term care services and representatives of skilled

19 nursing facilities, of home health agencies, of long-term care

20 providers, of fiscal intermediaries, and of medicare

21 beneficiaries.

22 (c) *REPORT ON INSTRUMENT.*—Not later than 1 year

23 after the date of the enactment of this Act, the Secretary shall

24 report to Congress on the instrument developed under this

25 section and make recommendations for its appropriate use.

1 *SEC. 218. INCLUDING IN ANNUAL REPORTS ON PROSPECTIVE*
2 *PAYMENT SYSTEM INFORMATION ON QUALITY*
3 *OF POST-HOSPITAL CARE.*

4 *(a) IN GENERAL.—Section 603(a)(2) of the Social Se-*
5 *curity Amendments of 1983 is amended—*

6 *(1) by striking “1987” in subparagraph (A) and*
7 *inserting “1989”, and*

8 *(2) by adding at the end the following new sub-*
9 *paragraph:*

10 *“(E) In each annual report to Congress under subpara-*
11 *graph (A), the Secretary shall include—*

12 *“(i) an evaluation of the adequacy of the proce-*
13 *dures for assuring quality of post-hospital services fur-*
14 *nished under title XVIII of the Social Security Act,*

15 *“(ii) an assessment of problems that have prevent-*
16 *ed groups of medicare beneficiaries (including those eli-*
17 *gible for medical assistance under title XIX of such*
18 *Act) from receiving appropriate post-hospital services*
19 *covered under such title, and*

20 *“(iii) information on reconsiderations and appeals*
21 *taken under title XVIII of such Act with respect to*
22 *payment for post-hospital services.”*

23 *(b) EFFECTIVE DATE.—The amendment made by sub-*
24 *section (a)(2) shall apply to reports for years beginning with*
25 *1986.*

1 **SEC. 219. CONNECTICUT HOSPICE WAIVER.**

2 Section 122(j) of the *Tax Equity and Fiscal Responsi-*
 3 *bility Act of 1982* (relating to waivers for certain hospices) is
 4 amended—

5 (1) by inserting “(1)” after the subsection desig-
 6 nation, and

7 (2) by adding at the end thereof the following new
 8 paragraph:

9 “(2) The Secretary of Health and Human Services
 10 shall grant a waiver of the limitation imposed by section
 11 1861(dd)(2)(A)(iii) of the Social Security Act (relating to
 12 the aggregate limit on the number of days of inpatient care)
 13 to any institution that was granted a waiver under paragraph
 14 (1). Such waiver shall provide for the application of such
 15 section to the institution by substituting “50” for “20”, shall
 16 apply only to beds in service as of July 1, 1986, and shall
 17 become effective October 1, 1986.”.

18 **SEC. 220. DISPROPORTIONATE SHARE TECHNICAL AMENDMENT.**

19 (a) *IN GENERAL.*—Section 1886(d)(5)(F)(i) of the
 20 Social Security Act (42 U.S.C. 1395ww(d)(5)(F)(i)) is
 21 amended by adding at the end (after and below subclause
 22 (II)) the following:

23 “For purposes of subclause (II), in determining, with respect
 24 to any hospital, the net inpatient care revenues for indigent
 25 care from State and local government sources, the Secretary
 26 shall take into account general payments made by State and

1 *local governments to defray the operating deficit of the hospi-*
 2 *tal (as well as payments specifically designated for indigent*
 3 *care) if the hospital demonstrates that such general payments*
 4 *are related to indigent care.”.*

5 (b) *EFFECTIVE DATE.*—*The amendment made by sub-*
 6 *section (a) shall be effective as if included in the enactment of*
 7 *the Consolidated Omnibus Budget Reconciliation Act of*
 8 *1985.*

9 **SEC. 221. ADDITIONAL MEMBERS OF PHYSICIAN PAYMENT**

10 **REVIEW COMMISSION.**

11 (a) *ADDITION OF TWO MEMBERS.*—*Section*
 12 *1845(a)(2) of the Social Security Act (42 U.S.C.*
 13 *1395x(a)(2)) is amended—*

14 (1) *by striking out “11” and inserting in lieu*
 15 *thereof “13”, and*

16 (2) *by striking out “four” and inserting in lieu*
 17 *thereof “five”.*

18 (b) *DATE OF APPOINTMENT.*—*Notwithstanding section*
 19 *1845(a)(2) of the Social Security Act, the Director of the*
 20 *Congressional Office of Technology Assessment shall appoint*
 21 *the two additional members of the Physician Payment*
 22 *Review Commission, as required by the amendment made by*
 23 *subsection (a), no later than 60 days after the date of the*
 24 *enactment of this Act.*

1 **SEC. 222. DELAY IN MANDATORY ASSIGNMENT FOR CLINICAL**
 2 **LABORATORY SERVICES PERFORMED IN A PHY-**
 3 **SICIAN'S OFFICE.**

4 *Section 9303(b)(5)(B) of the Consolidated Omnibus*
 5 *Budget Reconciliation Act of 1985 is amended by striking*
 6 *“January 1, 1987” and inserting in lieu thereof “January 1,*
 7 *1988”.*

8 **SEC. 223. COVERAGE OF SERVICES OF CERTIFIED REGISTERED**
 9 **NURSE ANESTHETISTS.**

10 *(a) COVERAGE OF SERVICES OF A CERTIFIED REG-*
 11 *ISTERED NURSE ANESTHETIST UNDER PART B.—Section*
 12 *1861(s) of the Social Security Act (42 U.S.C. 1395x(s)) is*
 13 *amended—*

14 *(1) by redesignating paragraphs (11) through (14)*
 15 *as paragraphs (12) through (15), respectively;*

16 *(2) by striking “and” at the end of paragraph (9);*

17 *(3) by striking the period at the end of paragraph*
 18 *(10) and inserting “; and”; and*

19 *(4) by inserting after paragraph (10) the follow-*
 20 *ing new paragraph:*

21 *“(11) services of a certified registered nurse anes-*
 22 *thetist (as defined in subsection (bb)).”.*

23 *(b) DEFINITION OF SERVICES OF A CERTIFIED REG-*
 24 *ISTERED NURSE ANESTHETIST.—Section 1861 of such Act*
 25 *is amended by inserting after subsection (aa) the following*
 26 *new subsection:*

1 “SERVICES OF A CERTIFIED REGISTERED NURSE

2 ANESTHETIST

3 “(bb)(1) The term ‘services of a certified registered
4 nurse anesthetist’ means anesthesia services and related care
5 furnished by a certified registered nurse anesthetist (as de-
6 fined in paragraph (2)) which the nurse anesthetist is legally
7 authorized to perform as such by the State in which the serv-
8 ices are furnished.

9 “(2) The term ‘certified registered nurse anesthetist’
10 means a registered nurse licensed by the State who meets
11 such education, training, and other requirements relating to
12 anesthesia services and related care as the Secretary may
13 prescribe. In prescribing such requirements the Secretary
14 may use the same requirements as those established by a
15 national organization for the certification of nurse
16 anesthetists.”.

17 (c) DIRECT PAYMENT FOR SERVICES.—Section
18 1832(a)(2)(B) of such Act (42 U.S.C. 1395k(a)(2)(B)) is
19 amended—

20 (1) by striking “and” at the end of clause (i),
21 (2) by striking “; and” at the end of clause (ii)
22 and inserting “, and”, and
23 (3) by adding at the end the following new clause:
24 “(iii) services of a certified registered nurse
25 anesthetist; and”.

1 (d) *AMOUNT OF PAYMENT.*—

2 (1) *Section 1833(a)(1) of such Act (42 U.S.C.*
3 *1395l(a)(1)) is amended by striking “and” at the end*
4 *of subparagraph (G), and by adding at the end the fol-*
5 *lowing: “and (H) with respect to services of a certified*
6 *registered nurse anesthetist under section 1861(s)(11),*
7 *the amount paid shall be 80 percent of the amount de-*
8 *termined under the fee schedule established by the Sec-*
9 *retary under subsection (l);”.*

10 (2) *Section 1833 of such Act is further amended*
11 *by adding at the end the following new subsection:*

12 “(l)(1) *The Secretary shall establish a fee schedule for*
13 *services of certified registered nurse anesthetists under sec-*
14 *tion 1861(s)(11)).*

15 “(2) *Except as provided in paragraph (3), the fee sched-*
16 *ule established under paragraph (1) shall be initially based*
17 *on the reasonable costs of providing services of a certified*
18 *registered nurse anesthetist (determined on the basis of the*
19 *most recent data available). The Secretary shall update the*
20 *initial fee schedule based on audited data from cost reporting*
21 *periods ending in fiscal year 1985. The fee schedule shall be*
22 *adjusted annually (to become effective on January 1 of each*
23 *calendar year) by a percentage increase or decrease equal to*
24 *the percentage increase or decrease in the economic index*
25 *used by the Secretary for purposes of the fourth sentence of*

1 *section 1842(b)(3) that becomes effective under such section*
2 *on such date.*

3 “(3)(A) *In establishing and updating the initial fee*
4 *schedule, the Secretary shall make such adjustments as are*
5 *necessary to ensure that (taking into account any adjust-*
6 *ments under subparagraph (B)) the total amount that will be*
7 *paid under this title (plus applicable coinsurance amounts)*
8 *for services furnished by certified registered nurse anesthe-*
9 *tists, and for medical direction furnished by physicians in*
10 *supervising certified registered nurse anesthetists, during*
11 *fiscal year 1988 equals the total amount that would be paid*
12 *under this title (plus applicable coinsurance amounts) in*
13 *such fiscal year for those services but for the enactment of the*
14 *amendments made by section 223 of the Medicare and Med-*
15 *icaid Patient and Program Protection Act of 1986.*

16 “(B) *The Secretary may adjust the prevailing charge*
17 *level determined under the third and fourth sentences of sec-*
18 *tion 1842(b)(3) for fiscal year 1988 for medical direction*
19 *furnished by a physician in supervising a certified registered*
20 *nurse anesthetist to the extent necessary (taking into account*
21 *any adjustments under subparagraph (A)) to ensure that the*
22 *total amount that will be paid under this title (plus applicable*
23 *coinsurance amounts) for services furnished by certified reg-*
24 *istered nurse anesthetists, and for medical direction furnished*
25 *by physicians in supervising certified registered nurse anes-*

1 thetists, in such fiscal year equals the total amount that
2 would be paid under this title (plus applicable coinsurance
3 amounts) in such fiscal year for those services but for the
4 enactment of the amendments made by section 223 of the
5 Medicare and Medicaid Patient and Program Protection Act
6 of 1986.

7 “(4) In establishing the fee schedule under paragraph
8 (1), the Secretary may utilize a system of base and time
9 units. The Secretary may establish a nationwide fee schedule
10 or adjust the fee schedule for geographic areas (as the Secre-
11 tary may determine to be appropriate).

12 “(5)(A) Payment for the services of a certified registered
13 nurse anesthetist (for which payment may otherwise be made
14 under this part) may be made on the basis of a claim or
15 request for payment presented by the certified registered
16 nurse anesthetist furnishing such services, or by a hospital,
17 physician, or group practice with which the certified regis-
18 tered nurse anesthetist furnishing such services has an em-
19 ployment or contractual relationship that provides for pay-
20 ment to be made under this part for such services to such
21 hospital, physician, or group practice.

22 “(B) Payment for the services of a certified registered
23 nurse anesthetist under this part may be made only on the
24 basis of an assignment described in section
25 1842(b)(3)(B)(ii), and any such assignment agreed to by a

1 *certified registered nurse anesthetist shall be binding upon*
 2 *any other person presenting a claim or request for payment*
 3 *for such services.*

4 “(C) *No hospital that presents a claim or request for*
 5 *payment for services of a certified nurse anesthetist under*
 6 *this part may treat any uncollected coinsurance amount im-*
 7 *posed under this part with respect to such services as a bad*
 8 *debt of such hospital for purposes of this title.”.*

9 (e) *NOT TREATED AS PART OF INPATIENT HOSPITAL*
 10 *SERVICES.—Section 1861(b)(4) of such Act (42 U.S.C.*
 11 *1395x(b)(4)) is amended by inserting before the semicolon*
 12 *the following: “, anesthesia services provided by a certified*
 13 *registered nurse anesthetist”.*

14 (f) *CONFORMING AMENDMENTS TO HOSPITAL PAY-*
 15 *MENTS.—*

16 (1) *Section 1886(a)(4) of such Act (42 U.S.C.*
 17 *1395ww(a)(4)), is amended by striking “, costs of an-*
 18 *esthesia services provided by a certified registered*
 19 *nurse anesthetist,”.*

20 (2) *Section 1886(d)(5) of such Act (42 U.S.C.*
 21 *1395ww(d)(5)) is amended by striking subparagraph*
 22 *(E) and redesignating subparagraph (F) as subpara-*
 23 *graph (E).*

24 (g) *OTHER CONFORMING AMENDMENTS.—*

1 (1) Section 1862(a)(14) of such Act (42 U.S.C.
2 1395y(a)(14)) is amended by inserting before the
3 period the following: “or are services of a certified reg-
4 istered nurse anesthetist”.

5 (2) Section 1866(a)(1)(H) of such Act (42
6 U.S.C. 1395cc(a)(1)(H)) is amended by inserting “,
7 and other than services of a certified registered nurse
8 anesthetist;” after “1861(a)(14)”.

9 (3) Sections 1864(a), 1865(a), 1902(a)(9)(C),
10 and 1915(a)(1)(B)(ii)(I) of such Act (42 U.S.C.
11 1395aa(a), 1395bb(a), 1396a(a)(9)(C), and
12 1396n(a)(1)(B)(ii)(I)) are each amended by striking
13 “paragraphs (11) and (12)” and inserting “paragraphs
14 (12) and (13)”.

15 (h) *EFFECTIVE DATE.*—The amendments made by this
16 section shall apply to items and services furnished on or after
17 October 1, 1987.

18 (i) *CONSTRUCTION.*—Nothing in this section or the
19 amendments made by this section shall contravene provisions
20 of State law relating to the practice of medicine or nursing or
21 State law requirements or institutional requirements regard-
22 ing the administration of anesthesia and its medical direction
23 or supervision.

1 **SEC. 224. COVERAGE OF SERVICES OF A PHYSICIAN ASSISTANT.**

2 (a) *SERVICES COVERED.*—Section 1861(s)(2) of the
3 Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

4 (1) by striking “and” at the end of subparagraph
5 (H),

6 (2) by adding “and” at the end of subparagraph
7 (I), and

8 (3) by adding at the end the following new sub-
9 paragraph:

10 “(J)(i) services performed by a physician assist-
11 ant (as defined in subsection (aa)(3)) under the super-
12 vision of a physician as (defined in subsection (r)(1))
13 in a hospital or skilled nursing facility, or as an as-
14 sistant at surgery—

15 “(I) that the physician assistant is legally
16 authorized to perform by the State in which the
17 services are performed, and

18 “(II) for which payment would be made
19 under part B if the services were performed by a
20 physician; and

21 “(ii) such services and supplies furnished as an
22 incident to such services as would be covered under
23 subparagraph (A) if furnished as an incident to a phy-
24 sician’s professional service;”.

25 (b) *DETERMINATION OF PAYMENT AMOUNT.*—Section
26 1842(b)(3) of such Act (42 U.S.C. 1395u(b)(3)) is amended

1 *by adding at the end the following: “With respect to services*
 2 *described in section 1861(s)(2)(J) (relating to a physician*
 3 *assistant acting under the supervision of a physician), the*
 4 *prevailing charges shall not exceed 90 percent of the prevail-*
 5 *ing charges applicable with respect to the physician’s per-*
 6 *formance of the services.”.*

7 (c) *PAYMENT TO EMPLOYER.—The first sentence of*
 8 *section 1842(b)(6) of such Act (42 U.S.C. 1395u(b)(6)) is*
 9 *amended—*

10 (1) *by striking “except that payment may be*
 11 *made (A)(i)” and inserting “except that (A) payment*
 12 *may be made (i)”;*

13 (2) *by striking “or (B)” and by inserting “, (B)*
 14 *payment may be made”;* and

15 (3) *by inserting before the period at the end the*
 16 *following: “, and (C) in the case of services described*
 17 *in section 1861(s)(2)(J) where payment is made on an*
 18 *assignment-related basis, payment shall be made to the*
 19 *employer of the physician assistant involved”.*

20 (d) *CONFORMING AMENDMENTS.—*

21 (1) *Section 1861(b)(4) of such Act; as amended*
 22 *by section 223, is further amended by inserting before*
 23 *the semicolon the following: “, and services which are*
 24 *performed by a physician assistant (as defined in sub-*
 25 *section (aa)(3))”.*

1 (2) Section 1833(i)(2)(A)(i) of the Social Securi-
 2 ty Act is amended by inserting “(excluding the services
 3 of a physician assistant (as defined in section
 4 1861(aa)(3)) acting as an assistant at surgery” after
 5 “procedure”.

6 (e) *EFFECTIVE DATE.*—The amendments made by this
 7 section shall apply to services furnished on or after
 8 January 1, 1987.

9 **SEC. 225. COVERAGE OF PSYCHOLOGISTS’ SERVICES FURNISHED**
 10 **AT RURAL HEALTH CLINICS.**

11 (a) *RURAL HEALTH CLINIC SERVICES.*—Section
 12 1861(aa)(1)(B) of the Social Security Act (42 U.S.C.
 13 1395x(aa)(1)(B)) is amended by striking out “physician as-
 14 sistant or by a nurse practitioner” and inserting in lieu
 15 thereof “physician assistant or a nurse practitioner (as de-
 16 fined in paragraph (3)), or by a clinical psychologist (as de-
 17 fined by the Secretary),”.

18 (b) *EFFECTIVE DATE.*—The amendment made by sub-
 19 section (a) shall be effective with respect to services furnished
 20 on or after the date of the enactment of this Act.

21 **SEC. 226. EXTENSION OF MORATORIUM ON LABORATORY PAY-**
 22 **MENT DEMONSTRATION.**

23 (a) *EXTENSION.*—The moratorium on laboratory pay-
 24 ment demonstration projects imposed by section 9204(a) of
 25 the Consolidated Omnibus Budget Reconciliation Act of

1 1985 is hereby extended until the date that is one year after
 2 the date of the enactment of the Medicare and Medicaid Pa-
 3 tient and Program Protection Act of 1986.

4 (b) *DESCRIPTION REQUIRED.*—The Secretary of
 5 Health and Human Services shall publish in the Federal
 6 Register a description of any demonstration project of the
 7 type described in such section at least 90 days prior to the
 8 implementation of such project.

9 **SEC. 227. HOME EMERGENCY RESPONSE CLINICAL TRIAL.**

10 (a) *IN GENERAL.*—

11 (1) In order to determine the efficiency and eco-
 12 nomic feasibility of providing medicare coverage under
 13 title XVIII of the Social Security Act for personal
 14 emergency response systems, the Secretary of Health
 15 and Human Services (hereinafter in this section re-
 16 ferred to as the “Secretary”) shall conduct a 48-month
 17 clinical trial in which—

18 (A) beneficiaries of medicare coverage under
 19 such title voluntarily participate in such trial and
 20 are randomly arranged into an experimental
 21 group which receives access to personal emergency
 22 response systems described in subsection (b) and a
 23 control group which does not receive such access;

24 (B) agencies which offer medical, public
 25 safety, or similar services as their primary func-

tion establish and maintain such response systems (hereinafter in this section referred to as “monitoring agencies”); and

(C) such monitoring agencies monitor and respond to signals for emergency medical assistance transmitted over such response systems by notifying medical personnel or other persons designated to attend to members of the experimental group.

(2) To facilitate the purpose of the clinical trial, the Secretary shall examine data from such trial and consider—

(A) the effect access to personal emergency response systems has on members of the experimental group, including—

(i) changes in their health status,

(ii) changes in their disability or impairment status,

(iii) causes of, or circumstances involving, their death or recovery from any illness or injury,

(iv) their use of medical services, including number and causes of hospitalization, visits with physicians, admissions to

1 *nursing homes, and use of home health serv-*
2 *ices, and*

3 *(v) their use of other medical, public*
4 *safety, or similar services provided by moni-*
5 *toring agencies;*

6 *(B) the personal characteristics of members*
7 *of the experimental and control groups, including*
8 *their—*

9 *(i) race, age, and sex, and*

10 *(ii) social relations and living arrange-*
11 *ments with relatives, friends, and neighbors*
12 *before and during the clinical demonstration;*

13 *(C) the frequency, purpose, and outcome of*
14 *use of any personal emergency response system by*
15 *members of the experimental group;*

16 *(D) the total health care expenditures in-*
17 *curring by members of the experimental group as*
18 *compared with those incurred by members of the*
19 *control group, including—*

20 *(i) health care costs reimbursable under*
21 *medicare, and*

22 *(ii) other health insurance payments or*
23 *health care expenses paid by, or on behalf of,*
24 *such persons; and*

(iii) the costs, including acquisition and operation expenditures, of providing personal emergency response systems for members of the experimental group.

(3) For purposes of such trial, the Secretary may, only to the extent provided in advance in appropriation Acts, enter into a contract with each monitoring agency which assures the Secretary that such agency will provide, maintain, and monitor the personal emergency response system throughout such trial.

(b) *PERSONAL EMERGENCY RESPONSE SYSTEM.*—

For purposes of the clinical trial, each personal emergency response system shall include—

(1) communication equipment located in the home of any member of the experimental group which transmits signals for emergency medical assistance over an existing telephone line to a 24-hour response center;

(2) a 24-hour response center operated by a monitoring agency to monitor such incoming signals; and

(3) medical personnel or other persons designated to attend to any member of the experimental group whenever emergency medical assistance is requested for such member.

(c) *REPORT.*—The Secretary shall, not later than 12 months after the conclusion of the trial, transmit a report to

1 *the Congress containing the findings and conclusions of the*
 2 *clinical trial authorized by this section, along with any legis-*
 3 *lative recommendations concerning the efficiency and eco-*
 4 *nomie feasibility of providing medicare coverage under title*
 5 *XVIII of the Social Security Act for personal emergency*
 6 *response systems.*

7 **SEC. 228. PREVENTIVE HEALTH SERVICES DEMONSTRATION**
 8 **PROGRAM.**

9 (a) *IN GENERAL.*—Section 9314 of the Consolidated
 10 Omnibus Budget Reconciliation Act of 1985 is amended—

11 (1) *in subsection (c)(2) by inserting “(at least one*
 12 *of which shall serve a rural area)” after “five sites”,*
 13 *and*

14 (2) *by striking the last sentence of subsection (f)*
 15 *and inserting in lieu thereof the following new sen-*
 16 *tence: “Funding for the administrative costs of the*
 17 *demonstration program shall not exceed \$5,900,000*
 18 *over the duration of the program.”.*

19 (b) *EFFECTIVE DATE.*—The amendments made by
 20 subsection (a) shall be effective as if included in section 9314
 21 of the Consolidated Omnibus Budget Reconciliation Act of
 22 1985 when such Act was enacted.

1 **SEC. 229. REQUIRING CONSUMER REPRESENTATIVE ON PEER**
 2 **REVIEW BOARDS.**

3 (a) *IN GENERAL.*—Section 1152 of the Social Securi-
 4 ty Act (42 U.S.C. 1320c-1) is amended—

5 (1) by striking “and” at the end of paragraph (1),

6 (2) by striking the period at the end of paragraph

7 (2) and inserting “; and”, and

8 (3) by adding at the end the following new para-
 9 graph:

10 “(3) has at least one individual who is a repre-
 11 sentative of consumers on its governing board.”.

12 (b) *EFFECTIVE DATE.*—The amendments made by
 13 subsection (a) shall apply to contracts entered into or renewed
 14 on or after January 1, 1987.

15 **SEC. 230. IMPROVEMENTS IN ADMINISTRATION OF END STAGE**
 16 **RENAL DISEASE NETWORKS AND PROGRAM.**

17 (a) *REORGANIZATION OF ESRD NETWORK AREAS*
 18 *AND ORGANIZATIONS.*—

19 (1) *IN GENERAL.*—Subparagraph (A) of subsec-
 20 tion (c)(1) of section 1881 of the Social Security Act
 21 (42 U.S.C. 1395rr) is amended to read as follows:

22 “(A)(i) For the purpose of assuring effective and effi-
 23 cient administration of the benefits provided under this sec-
 24 tion, the Secretary shall, in accordance with such criteria as
 25 he finds necessary to assure the performance of the responsi-
 26 bilities and functions specified in paragraph (2)—

1 “(I) establish no less than 14 end stage renal dis-
2 ease network areas, and

3 “(II) designate a network administrative organi-
4 zation for each such area.

5 The Secretary shall publish in the Federal Register a de-
6 scription of the geographic area that he determines, after con-
7 sultation with appropriate professional and patient organiza-
8 tions, constitutes each network area and the criteria on the
9 basis of which such determination is made.

10 “(ii)(I) The Secretary shall solicit applications from or-
11 ganizations for designation as area network administrative
12 organizations in accordance with provisions of law relating to
13 competitive bidding. In determining which organizations to
14 so designate, the Secretary shall take into account the extent
15 to which an organization meets the standards and criteria
16 established pursuant to subclause (II).

17 “(II) In order to determine whether the Secretary
18 should enter into, continue, or terminate an agreement with a
19 network administrative organization designated for an area
20 established under clause (i), the Secretary shall develop and
21 publish in the Federal Register standards, criteria, and pro-
22 cedures to evaluate an applicant organization’s capabilities to
23 perform (and, in the case of an organization with which such
24 an agreement is in effect, actual performance of) the responsi-
25 bilities described in paragraph (2).”.

1 (2) *DEADLINE FOR ESTABLISHING NEW*
 2 *AREAS.*—*The Secretary of Health and Human Serv-*
 3 *ices shall establish end stage renal disease network*
 4 *areas, pursuant to the amendment made by paragraph*
 5 *(1), not later than January 1, 1987.*

6 (3) *TRANSITION.*—*In first designating network*
 7 *administrative organizations for areas so established, if*
 8 *the Secretary determines that it is necessary to termi-*
 9 *nate an agreement with a network organization in op-*
 10 *eration on the date of the enactment of this Act, the*
 11 *Secretary shall provide for concurrent designation of*
 12 *such organization and its successor organization for a*
 13 *period of 30 days in order to facilitate an orderly tran-*
 14 *sition and to assure that necessary records and data*
 15 *are transferred to the successor organization.*

16 (b) *RESPONSIBILITIES OF NETWORK ORGANIZA-*
 17 *TIONS.*—*Subsection (c)(2) of such section is amended by re-*
 18 *designating subparagraphs (D) and (E) as subparagraphs*
 19 *(H) and (I), respectively, and inserting after subparagraph*
 20 *(C) the following new subparagraphs:*

21 “(D) *implementing a procedure for evaluating*
 22 *and resolving patient grievances;*

23 “(E) *developing standards of care to assure*
 24 *proper medical care;*

1 “(F) collecting, validating, and analyzing such
 2 data as are necessary to prepare the reports required
 3 by subparagraph (I) and subsection (g) and to assure
 4 the maintenance of the registry established under para-
 5 graph (7);

6 “(G) developing appropriate mechanisms for pa-
 7 tient advocacy;”.

8 (c) NATIONAL END STAGE RENAL DISEASE
 9 REGISTRY.—

10 (1) ESTABLISHMENT OF REGISTRY.—Subsection
 11 (c) of such section is further amended by adding at the
 12 end the following new paragraph:

13 “(7) Not later than January 1, 1988, the Secretary
 14 shall establish a national end stage renal disease registry the
 15 purpose of which shall be to assemble and analyze the data
 16 reported by network organizations, transplant centers, and
 17 other sources on all end stage renal disease patients in a
 18 manner that will permit—

19 “(A) the preparation of the annual report to the
 20 Congress required under subsection (g);

21 “(B) an identification of the economic impact,
 22 cost-effectiveness, and medical efficacy of alternative
 23 modalities of treatment;

1 “(C) an evaluation with respect to the most appro-
2 priate allocation of resources for the treatment and re-
3 search into the cause of end stage renal disease;

4 “(D) the determination of patient mortality and
5 morbidity rates, and trends in such rates, and other in-
6 dices of quality of care; and

7 “(E) such other analyses relating to the treatment
8 and management of end stage renal disease as will
9 assist the Congress in evaluating the end stage renal
10 disease program under this section.

11 The Secretary shall provide for such coordination of data
12 collection activities, and such consolidation of existing end
13 stage renal disease data systems, as is necessary to achieve
14 the purpose of such registry, shall determine the appropriate
15 location of the registry, and shall provide for the appointment
16 of a professional advisory group to assist the Secretary in the
17 formulation of policies and procedures relevant to the man-
18 agement of such registry.”.

19 (2) *REPORT.*—The Secretary shall submit to the
20 Congress, no later than April 1, 1987, a full report on
21 the progress made in establishing the national end
22 stage renal disease registry under the amendment made
23 by paragraph (1).

1 **SEC. 231. RIGHTS OF ESRD PATIENTS.**

2 (a) *IN GENERAL.*—Section 1881 of the Social Securi-
3 ty Act (42 U.S.C. 1395rr) is amended by adding at the end
4 thereof the following new subsection:

5 “(h)(1) A provider or facility that proposes to provide or
6 utilize any reprocessed dialysis devices or supplies for the
7 dialysis of an individual entitled to benefits under this title
8 shall furnish the individual or a legal guardian with a writ-
9 ten document informing the individual or guardian of—

10 “(A) the specific reprocessed dialysis devices and
11 supplies the provider or facility proposes to provide or
12 utilize,

13 “(B) the specific substances and materials to be
14 utilized in reprocessing each such device or supply, and

15 “(C) the known risks and benefits of utilizing
16 each such device or supply (including, but not limited
17 to, any increased risk of infection and any harmful
18 long-term effects that the substances and materials uti-
19 lized in reprocessing the device or supply may have).

20 “(2)(A) A provider or facility shall allow the Secretary
21 (or a State agency designated by the Secretary) full access to
22 all records of the provider or facility relating to the provision
23 or utilization of reprocessed dialysis devices or supplies for
24 the dialysis of individuals entitled to benefits under this title.

25 “(B) If the Secretary determines that a provider or fa-
26 cility has failed to comply with any of the requirements of

1 *this subsection, the Secretary may terminate or withhold cer-*
 2 *tification of the provider or facility for purposes of payment*
 3 *for services, devices, or supplies furnished to individuals enti-*
 4 *tled to benefits under this title.*

5 “(3) *For purposes of this subsection, the term ‘reproc-*
 6 *essed dialysis device or supply’ shall include, but is not limit-*
 7 *ed to, any hemodialyzer, blood line, transducer filter, and*
 8 *dialyzer cap that has been used in dialysis and processed for*
 9 *reuse in dialysis.’.*”

10 **(b) EFFECTIVE DATE.**—*The amendment made by sub-*
 11 *section (a) shall become effective on the date that is 90 days*
 12 *after the date of the enactment of this Act.*

13 **SEC. 232. REQUIREMENTS FOR TRANSPLANT HOSPITALS AND**
 14 **ORGAN PROCUREMENT AGENCIES.**

15 **(a) IN GENERAL.**—*Part A of title XI of the Social*
 16 *Security Act is amended by inserting after section 1137 the*
 17 *following new section:*

18 **“REQUIREMENTS FOR TRANSPLANT HOSPITALS AND**
 19 **ORGAN PROCUREMENT AGENCIES**

20 **“SEC. 1138. (a)** *The Secretary shall provide that a*
 21 *hospital—*

22 **“(1)** *that otherwise meets the requirements of title*
 23 *XVIII or XIX, and*

24 **“(2)** *in which organ transplants are performed,*
 25 *may receive payment under such title for such transplants*
 26 *only if the hospital is a member of, and abides by the rules*

1 *and requirements of, the Organ Procurement and Transplan-*
2 *tation Network established pursuant to section 372 of the*
3 *Public Health Service Act (in this section referred to as the*
4 *'Network').*

5 “(b)(1) *The Secretary shall provide that payment may*
6 *be made under title XVIII or XIX with respect to organ*
7 *procurement costs attributable to payments made to an organ*
8 *procurement agency only if the agency—*

9 “(A)(i) *is a qualified organ procurement organiza-*
10 *tion (as described in section 371(b) of the Public*
11 *Health Service Act) that is operating under a grant*
12 *made under section 371(a) of such Act), or*

13 “(ii) *has been certified or recertified by the Secre-*
14 *tary within the past two years as meeting the stand-*
15 *ards to be a qualified organ procurement organization*
16 *(as so defined);*

17 “(B) *meets the requirements that are applicable*
18 *under such title to organ procurement agencies;*

19 “(C) *meets performance-related standards pre-*
20 *scribed by the Secretary;*

21 “(D) *is a member of, and abides by the rules and*
22 *requirements of, the Network;*

23 “(E) *allocates organs, within its service area and*
24 *nationally, in accordance with medical criteria and the*
25 *policies of the Network; and*

1 “(F) is designated by the Secretary as an organ
2 procurement organization payments to which may be
3 treated as organ procurement costs for purposes of re-
4 imbursement under such title.

5 “(2) The Secretary may not designate more than one
6 organ procurement organization for each service area (de-
7 scribed in section 371(b)(1)(E) of the Public Health Service
8 Act) under paragraph (1)(F).”.

9 (b) *EFFECTIVE DATE.*—The amendment made by this
10 section shall apply to costs of organs procured on or after
11 January 1, 1988.

12 **SEC. 233. MEDICARE AUTOMATED DATA RETRIEVAL SYSTEM.**

13 *The Medicare Automated Data Retrieval System under*
14 *development by the Secretary of Health and Human Services*
15 *to provide integrated information on the claims of benefici-*
16 *aries under parts A and B of title XVIII of the Social Secu-*
17 *rity Act shall include information for all fiscal years begin-*
18 *ning after September 30, 1979 (or after September 30, 1981,*
19 *if the Secretary deems it appropriate).*

20 **Subtitle B—Provisions Relating to Medicaid**

21 **SEC. 241. CLARIFICATION OF ELIGIBILITY OF HOMELESS**
22 **INDIVIDUALS.**

23 *Section 1902(b)(2) of the Social Security Act (42*
24 *U.S.C. 1396a(b)(2)) is amended by inserting before the*

1 semicolon the following: “regardless of whether or not the res-
 2 idence is maintained permanently or at a fixed address”.

3 **SEC. 242. HOSPICE BENEFITS FOR DUAL ELIGIBLES.**

4 (a) *IN GENERAL.*—Section 1902 of the Social Securi-
 5 ty Act (42 U.S.C. 1396a), as amended by section 106, is
 6 further amended by adding at the end thereof the following
 7 new subsection:

8 “(m) Notwithstanding any other provision of this title,
 9 any State plan approved under this title that does not make
 10 hospice care available to individuals eligible for medical as-
 11 sistance under the plan must provide that in the case of any
 12 individual—

13 “(1) who is eligible for—

14 “(A) medical assistance under the plan, and

15 “(B) benefits under part A of title XVIII;

16 “(2) who is a resident of a skilled nursing facility
 17 or an intermediate care facility; and

18 “(3) with respect to whom an election is in effect
 19 under section 1812(d),

20 a separate rate shall be paid to the hospice for the room and
 21 board furnished by the skilled nursing facility or intermedi-
 22 ate care facility during the period such election is in effect.

23 Such rate shall not include payment for any services that are
 24 covered under the hospice benefit and shall be in lieu of any

1 other payment to such facility under section
2 1902(a)(13)(A).”.

3 (b) *EFFECTIVE DATE.*—

4 (1) *Except as provided in paragraph (2), the*
5 *amendment made by subsection (a) shall apply with*
6 *respect to medical assistance furnished on or after the*
7 *date that is ninety days after the date of the enactment*
8 *of this Act.*

9 (2) *In the case of a State plan for medical assist-*
10 *ance under title XIX of the Social Security Act which*
11 *the Secretary of Health and Human Services deter-*
12 *mines requires State legislation in order for the plan to*
13 *meet the additional requirements of the amendments*
14 *made by subsection (a), the State plan shall not be re-*
15 *garded as failing to comply with the requirements of*
16 *such title solely on the basis of its failure to meet the*
17 *additional requirements before the first day of the first*
18 *calendar year beginning after the close of the first reg-*
19 *ular session of the State legislature that begins after*
20 *the date of the enactment of this Act.*

21 **SEC. 243. CLARIFICATION OF INSTITUTIONAL PAYMENT RATE**
22 **LIMITATIONS.**

23 (a) *IN GENERAL.*—

24 (1) *Section 1902 of the Social Security Act (as*
25 *amended by section 106 and section 242, is further*

1 amended by adding at the end thereof the following
2 new subsection:

3 “ ‘(n)(1) For purposes of paragraphs (13) and (30) of
4 subsection (a), in determining whether the rates established
5 by a State with respect to inpatient hospital services, skilled
6 nursing facility services, or intermediate care facility services
7 are reasonable, the Secretary may take into account—

8 “(A) the amount that would have been paid for
9 such services under the reimbursement principles appli-
10 cable under title XVIII, and

11 “(B) any other factors bearing on the reasonable-
12 ness of the rates deemed appropriate by the Secretary.

13 “(2) If the Secretary establishes a limit under para-
14 graph (1) on the reasonableness of rates for inpatient hospital
15 services based on title XVIII reimbursement principles, the
16 Secretary shall not include under such limit any payment
17 adjustments made by a State with respect to hospitals that
18 serve a disproportionate number of low income patients with
19 special needs.”.

20 (2) Section 1902(a)(30)(A) of such Act is
21 amended by inserting “reasonable and” after “pay-
22 ments are”.

23 (b) *EFFECTIVE DATE.*—The amendments made by
24 subsection (a) shall be effective as if included in the enact-
25 ment of the Omnibus Budget Reconciliation Act of 1981.

1 **SEC. 244. WAIVER OF CERTAIN MEDICAID REQUIREMENTS.**

2 *Notwithstanding the three-month limitation set forth in*
3 *sections 1902(a)(34) and 1905(a) of the Social Security Act,*
4 *payment may be made under title XIX of such Act with*
5 *respect to care and services provided by the Medical Univer-*
6 *sity of South Carolina, after September 30, 1984, and before*
7 *July 1, 1985, to individuals—*

8 (1) *who are not described in section*
9 *1902(a)(10)(A) of such Act,*

10 (2) *who, upon application, would have been eligi-*
11 *ble as individuals under the age of 18 or pregnant*
12 *women, for medical assistance under the State plan*
13 *approved under such title at the time such care and*
14 *services were provided, and*

15 (3) *who, not later than six months after the date*
16 *of the enactment of this Act, are determined by the*
17 *State agency administering or supervising the admin-*
18 *istration of such plan to have been so eligible.*

19 **SEC. 245. ALTERNATIVE STANDARD OF DETERMINING PAYMENT**
20 **FOR ADMINISTRATIVELY NECESSARY DAYS.**

21 (a) **IN GENERAL.**—*For purposes of section*
22 *1902(a)(13)(A) of the Social Security Act as it relates to*
23 *payment rates for hospital patients who are receiving an in-*
24 *appropriate level of care, in determining whether an excess of*
25 *beds exists as required under section 1861(v)(1)(G)(iv) of*
26 *such Act, the Secretary shall not find that an excess exists*

1 *with respect to a hospital in New York State if he determines*
 2 *that—*

3 (1)(A) *the occupancy rate of the hospital involved,*

4 *or*

5 (B) *the average occupancy rate for hospitals in*
 6 *the area,*

7 *exceeds 80 percent; and*

8 (2) *a sufficient number of hospital beds in the*
 9 *State have been decertified to offset any amounts paid*
 10 *by reason of this subsection.*

11 (b) *APPLICATION.—This section shall apply to medical*
 12 *assistance furnished on or after January 1, 1986.*

13 **SEC. 246. INTERMEDIATE CARE FACILITIES FOR THE MEN-**
 14 **TALLY RETARDED TECHNICAL CORRECTION.**

15 (a) *IN GENERAL.—Section 9516(b) of the Consolidat-*
 16 *ed Omnibus Budget Reconciliation Act of 1985 is amended*
 17 *by adding at the end thereof the following new paragraph:*

18 “(3) *The Secretary of Health and Human Services*
 19 *shall permit a State to make an election under section 1919*
 20 *of the Social Security Act prior to the promulgation of final*
 21 *regulations to implement such section.”.*

22 (b) *EFFECTIVE DATE.—The amendment made by sub-*
 23 *section (a) shall be effective as if included in the enactment of*
 24 *the Consolidated Omnibus Budget Reconciliation Act of*
 25 *1986.*

1 *Subtitle C—Provisions Relating to Medicare and*
2 *Medicaid*

3 *SEC. 251. FRAIL ELDERLY DEMONSTRATION PROJECT WAIVERS.*

4 *(a) AUTHORIZATION.—The Secretary of Health and*
5 *Human Services may grant waivers of certain requirements*
6 *of titles XVIII and XIX of the Social Security Act to not*
7 *more than 10 community-based organizations to enable such*
8 *organizations to provide comprehensive health care services*
9 *on a capitated basis to frail elderly patients at risk of institu-*
10 *tionalization.*

11 *(b) TERMS AND CONDITIONS.—*

12 *(1) Except as provided in paragraph (2), the*
13 *terms and conditions of a waiver granted pursuant to*
14 *this section shall be the same as the terms and condi-*
15 *tions of the On Lok waiver (referred to in section*
16 *603(c) of the Social Security Amendments of 1983*
17 *and extended by section 9220 of the Consolidated Om-*
18 *nibus Budget Reconciliation Act of 1985).*

19 *(2) Any waiver granted pursuant to this section*
20 *shall be for an initial period of 3 years. The Secretary*
21 *may extend such waiver beyond such initial period for*
22 *so long as the Secretary finds that the organization*
23 *complies with the terms and conditions described in*
24 *paragraph (1).*

1 **SEC. 252. CONDITIONS OF PARTICIPATION FOR SKILLED NURS-**
2 **ING FACILITIES.**

3 (a) *SKILLED NURSING FACILITIES.*—Section 1861(j)
4 of the Social Security Act (42 U.S.C. 1395x(j)) is
5 amended—

6 (1) by striking paragraph (2) and inserting in
7 lieu thereof the following:

8 “(2) provides for the establishment, adherence to,
9 and periodic review of adequate policies and procedures
10 for the management of the facility, which assure that—

11 “(A) all nurse aides or nurse assistants pro-
12 viding direct patient care have completed a State-
13 approved training program,

14 “(B) an appropriate criminal background
15 check must be conducted with respect to all em-
16 ployees providing direct patient care,

17 “(C) representatives of the State office of
18 long-term care ombudsman (established under sec-
19 tion 307(a)(12) of the Older Americans Act of
20 1965) have access to the facility and its residents,
21 and, with the permission of a patient or patient’s
22 legal guardian, have access to review the patient’s
23 medical and social records;”;

24 (2) by striking paragraph (5) and inserting in
25 lieu thereof the following:

1 “(5)(A) maintains clinical records on all patients,
2 and

3 “(B) provides for accurate assessments of each
4 patient—

5 “(i) that are performed—

6 “(I) upon admission, periodically, and
7 whenever there is a change in patient status,
8 and

9 “(II) by a professional registered nurse
10 (or by a licensed practical nurse who has re-
11 ceived appropriate training in performing
12 such assessments and who is under the su-
13 pervision of a professional registered nurse),
14 and

15 “(ii) the results of which are recorded and
16 maintained in a standard format in the clinical
17 records of the patient;”;

18 (3) by redesignating paragraphs (13), (14), and
19 (15), as paragraphs (17), (18), and (19), respectively;

20 (4) by inserting after paragraph (12) and before
21 paragraph (17), as so redesignated, the following new
22 paragraphs:

23 “(13) cares for patients in such a manner and in
24 such an environment as will promote maintenance or

1 enhancement of the patient's quality of life,
2 including—

3 “(A) providing a supportive, comfortable,
4 homelike environment in which patients have a
5 reasonable choice over their surroundings, sched-
6 ules, health care, and activities (as defined by the
7 Secretary in regulations),

8 “(B) treating patients with dignity and re-
9 spect, and

10 “(C) affording patients opportunities to
11 interact with others in and outside the facility;

12 “(14) assures the protection of each patient's civil
13 and legal rights, including the right—

14 “(A) to be fully informed, as evidenced by
15 the patient's written acknowledgment, before or at
16 the time of admission and during his or her stay,
17 of these rights and of all rules and regulations
18 governing patient conduct and responsibility;

19 “(B) to be fully informed, and given a writ-
20 ten statement before or at the time of admission
21 and during his or her stay, of services available
22 in the facility and of related charges for such
23 services, including any charges for services not
24 covered under this title or under a State plan ap-

1 *proved under title XIX, or not covered by the fa-*
2 *cility's basic per diem rate;*

3 *“(C) to be fully informed by a physician of*
4 *his or her medical condition, unless medically*
5 *contraindicated for a specified and limited period*
6 *of time (as documented, by a physician, in the pa-*
7 *tient's medical record), and to be afforded the op-*
8 *portunity to participate in the planning of his or*
9 *her medical treatment;*

10 *“(D) to be transferred or discharged only for*
11 *medical reasons or for his or her own welfare or*
12 *the welfare of other patients, or for nonpayment of*
13 *his or her stay (except as prohibited by this title*
14 *or title XIX), and is given reasonable advance*
15 *notice to ensure orderly transfer or discharge;*

16 *“(E) to be assisted, throughout his or her*
17 *stay, in the exercise of his or her rights as a pa-*
18 *tient and as a citizen, and to this end his or her*
19 *right to file complaints under this section, voice*
20 *grievances, and recommend changes in policies*
21 *and service to the staff of the facility and to out-*
22 *side representatives of his or her choice, free from*
23 *restraint, interference, coercion, discrimination, or*
24 *reprisal;*

1 “(F) to manage his or her personal financial
2 affairs or be given, at least quarterly, an itemized
3 accounting of financial transactions made on his
4 or her behalf whenever the facility accepts his or
5 her written delegation of this responsibility for
6 any period of time in conformance with State
7 law;

8 “(G) to be free from mental and physical
9 abuse;

10 “(H) to be free from chemical and physical
11 restraints, except—

12 “(i) as authorized in writing by a phy-
13 sician for a specified and limited period of
14 time, or

15 “(ii) in emergencies when necessary to
16 protect the patient from injury to himself or
17 herself or to others (in which case notice of
18 the use of such restraints, and an explana-
19 tion of the circumstances thereof, shall be
20 promptly provided to the attending physician
21 and noted in the patient’s medical record);

22 “(I) to be assured confidential treatment of
23 his personal and medical records;

24 “(J) to approve or refuse the release of such
25 records to any individual outside the facility,

1 *except in the case of a transfer to another health*
2 *care institution or as required by law or third-*
3 *party payment contract;*

4 “(K) to be treated with consideration, re-
5 *spect, and full recognition of his or her dignity*
6 *and individuality, including privacy in treatment*
7 *and in care for his or her personal needs;*

8 “(L) to be free from performing services for
9 *the facility that are not included for therapeutic*
10 *purposes in his or her plan of care;*

11 “(M) to retain personal clothing and posses-
12 *sions as space permits, unless to do so would in-*
13 *fringe on the rights of other patients (unless medi-*
14 *cally contraindicated);*

15 “(N) to associate and communicate privately
16 *with persons of his or her choice, and to send and*
17 *receive mail unopened (unless medically contra-*
18 *indicated);*

19 “(O) to participate freely in social, religious,
20 *and community activities (unless medically con-*
21 *traindicated); and*

22 “(P) if the patient is married, to private
23 *visits from his or her spouse and to share a room*
24 *if both are patients in the facility (unless medical-*
25 *ly contraindicated);*

1 “(15) assures that no retaliation or reprisal is
2 *made with respect to any patient or employee by reason*
3 *of his or her filing of a complaint with the State office*
4 *of long-term care ombudsman (established under sec-*
5 *tion 307(a)(12) of the Older Americans Act of 1965),*
6 *the State survey agency, or the Secretary with respect*
7 *to the quality of care, environment, or services provided*
8 *by the facility;*

9 “(16) does not—

10 “(A) require (as a condition of admission or
11 *continued stay in the facility) any oral or written*
12 *assurance from an individual eligible for benefits*
13 *under this title or for medical assistance under a*
14 *State plan approved under title XIX (or from*
15 *any other person with respect to such individual)*
16 *that—*

17 “(i) such individual or such person will
18 *be financially responsible for any charges*
19 *with respect to the individual for which pay-*
20 *ment may not be made under this title or*
21 *title XIX, as the case may be, or*

22 “(ii) that such individual is not eligible
23 *for or will not apply for benefits under this*
24 *title or title XIX;*

1 “(B) require any nonrefundable deposit from
2 any such individual; or

3 “(C) furnish items and services with respect
4 to any such individual that differ in quality or ef-
5 fectiveness from the items and services furnished
6 to individuals who are not entitled to benefits
7 under this title or to medical assistance under
8 such plan;”; and

9 (5) by adding at the end thereof the following:

10 “The assessments required by paragraph (5)(B) shall
11 include (but not be limited to) the identification of medical
12 problems, the measurement of physical functioning (such as
13 mobility and the ability to conduct daily activities), and the
14 measurement of mental and psychosocial functioning, and
15 shall be carried out in consultation with appropriate health
16 care providers (such as nutritionists and physical
17 therapists).”.

18 (b) *INTERMEDIATE CARE FACILITIES*.—The first
19 sentence of section 1905(c) of the Social Security Act (42
20 U.S.C. 1396d(c)) is amended—

21 (1) by striking “and (4)” and inserting in lieu
22 thereof “(4)”, and

23 (2) by striking out “funds.” and inserting in lieu
24 thereof “funds, and (5) meets the requirements of para-

1 *graphs (2), (5), (13), (14), (15), and (16) of section*
 2 *1861(j).”.*

3 *(c) STATE PLAN REQUIREMENT.—Section 1902(a) of*
 4 *such Act, as amended by section 104, is further amended—*

5 *(1) by striking “and” at the end of paragraph*
 6 *(46),*

7 *(2) by striking the period at the end of paragraph*
 8 *(47) and inserting in lieu thereof “; and”, and*

9 *(3) by adding at the end thereof the following new*
 10 *paragraph:*

11 *“(48) provide for the establishment of training*
 12 *programs and competency testing for nurse aides and*
 13 *nurse assistants furnishing care in a skilled nursing*
 14 *facility or intermediate care facility.”.*

15 *(d) CONFORMING AMENDMENTS.—*

16 *(1) Section 1905(c) of such Act is amended by*
 17 *striking “1861(j)(14)” and inserting in lieu thereof*
 18 *“1861(j)(18)”.*

19 *(2) Sections 1863 and 1883(f) of such Act are*
 20 *each amended by striking “1861(j)(15)” and inserting*
 21 *in lieu thereof “1861(j)(19)”.*

22 *(e) EFFECTIVE DATES.—*

23 *(1) The amendments made by subsection (a) shall*
 24 *apply to care and services furnished on or after Octo-*
 25 *ber 1, 1987.*

1 (2) *The amendments made by subsections (b) and*
2 *(c) shall apply to medical assistance furnished on or*
3 *after October 1, 1987.*

4 (3) *The Secretary of Health and Human Services*
5 *shall establish and implement minimum standards for*
6 *the training programs and competency testing required*
7 *to be established pursuant to section 1902(a)(48) of the*
8 *Social Security Act. Final regulations implementing*
9 *such standards shall be promulgated not later than Oc-*
10 *tober 1, 1988.*

11 (4) *The Secretary of Health and Human Services*
12 *shall develop and implement—*

13 (A) *a minimum data set of information to be*
14 *employed in conducting the assessments required*
15 *by section 1861(j)(5)(B) of the Social Security*
16 *Act,*

17 (B) *a timetable specifying the frequency of*
18 *such assessments, and*

19 (C) *standards for the training necessary to*
20 *conduct such assessments.*

21 *Final regulations implementing the requirements of*
22 *this paragraph shall be implemented not later than Oc-*
23 *tober 1, 1988.*

1 **SEC. 253. LEGISLATIVE PROPOSAL FOR LONG-TERM CARE**
2 **FACILITIES.**

3 *The Secretary of Health and Human Services shall*
4 *submit to the Congress proposed legislation providing for the*
5 *elimination of existing categories of facilities providing long-*
6 *term care for purposes of the programs under titles XVIII*
7 *and XIX of the Social Security Act, and for the replacement*
8 *of such categories with a single designation of long-term care*
9 *facility which would provide and be reimbursed for various*
10 *levels of long-term care at differing rates. The Secretary shall*
11 *submit the proposed legislation not later than January 1,*
12 *1988.*

13 **SEC. 254. CHANGES IN CERTIFICATION PROGRAM AND PROCESS.**

14 (a) **SEPARATING SURVEYS AND CONSULTATIVE**
15 **SERVICES.**—*Section 1864(a) of the Social Security Act (42*
16 *U.S.C. 1395aa(a)) is amended by inserting before the period*
17 *at the end of the fourth sentence the following: “and such*
18 *consultative services shall be separate from the survey process*
19 *and shall not be performed by those individuals conducting*
20 *the survey”.*

21 (b) **DISCLOSURE OF INSPECTION REPORTS.**—*Section*
22 *1106(e) of such Act (42 U.S.C. 1306(e)) is amended—*

23 (1) *by striking “60” the first place it appears and*
24 *inserting in lieu thereof “30”,*

25 (2) *by striking “report; nor” and inserting in lieu*
26 *thereof “report. Nor”,*

1 (3) by striking “(e) No report” and inserting in
2 *lieu thereof “(e)(1) Except as provided in paragraph*
3 *(2), no report”, and*

4 (4) by adding at the end thereof the following new
5 *paragraph:*

6 “(2) Notwithstanding the first sentence of para-
7 *graph (1), the Secretary may release a report described*
8 *in subsection (d) to a State long-term care ombudsman*
9 *(established under section 307(a)(12) of the Older*
10 *Americans Act of 1965) or a designee before the end of*
11 *the 30-day period described in such sentence.”.*

12 (c) *DETERMINATION OF SKILLED NURSING FACILI-*
13 *TY COMPLIANCE.—(1) Section 1864 of such Act is further*
14 *amended by adding at the end the following new subsections:*

15 “(d) Any agreement under subsection (a) entered into
16 *by the Secretary to determine whether an institution is in*
17 *compliance with the conditions of participation applicable to*
18 *a skilled nursing facility shall include the following*
19 *provisions:*

20 “(1) Certification surveys conducted with respect
21 *to a facility—*

22 “(A) shall not be announced in advance,

23 “(B) shall be conducted by a multidiscipli-
24 *nary team of professionals (including at least a*

1 *registered professional nurse, a registered dieti-*
2 *cian, and a registered sanitarian),*

3 *“(C) shall focus on the quality of care pro-*
4 *vided to patients,*

5 *“(D) shall include a private meeting between*
6 *patients and survey personnel to discuss patients’*
7 *experiences within the facility with respect to pa-*
8 *tients’ rights and compliance with the standards*
9 *applicable to the facility under this title,*

10 *“(E) except as provided in subparagraph*
11 *(F), shall be conducted, with respect to each facil-*
12 *ity, between 9 and 15 months after the most re-*
13 *cently completed survey for the facility, with such*
14 *surveys being conducted, on a statewide average,*
15 *12 months apart, and*

16 *“(F) may be conducted, with respect to a fa-*
17 *cility that was fully in compliance with each of*
18 *the minimum standards established by the Secre-*
19 *tary under section 1861(j) for each of the two*
20 *most recent surveys of the facility, between 9 and*
21 *18 months after the most recently completed*
22 *survey for the facility.*

23 *“(2) The State shall provide the professionals de-*
24 *scribed in paragraph (1)(B) with comprehensive initial*

1 *and continuing training with respect to the conduct of*
2 *such surveys (as approved by the Secretary).*

3 “(3) *In addition to surveys described in para-*
4 *graph (1), the State shall provide for an abbreviated*
5 *survey of a facility within 45 days after a change in*
6 *ownership of the facility, a change in the facility’s ad-*
7 *ministrator, or a change in the facility’s director of*
8 *nursing. Upon receiving a written request from a*
9 *State, the Secretary may waive the requirements of*
10 *this paragraph with respect to a facility.*

11 “(4) *The State agency responsible under the*
12 *agreement must maintain and utilize a specialized*
13 *survey team for the purpose of identifying, surveying,*
14 *gathering and preserving evidence, and carrying out*
15 *appropriate enforcement actions against chronically*
16 *substandard facilities. Such a team shall include (or*
17 *have prompt access to) an attorney, physician, regis-*
18 *tered professional nurse, investigator, and other health*
19 *professionals and shall be available for providing en-*
20 *forcement training and technical assistance to regular*
21 *survey staff of the State.*

22 “(5) *In accordance with specific procedures devel-*
23 *oped by the Secretary, the State agency shall provide*
24 *for investigation of complaints respecting skilled nurs-*
25 *ing facilities.*

1 “(e) Notwithstanding any other provision of this section,
2 no agreement under this section shall apply with respect to
3 determining whether an institution owned by a State is in
4 compliance with the conditions of participation applicable to
5 a skilled nursing facility. Such determination shall be made,
6 for purposes of this title and title XIX, by the Secretary.

7 “(f) The Secretary shall develop and implement criteria
8 and procedures for the evaluation of plans of correction sub-
9 mitted by institutions seeking compliance with the standards
10 for skilled nursing facilities. Such criteria and procedures
11 shall be designed—

12 “(1) to maximize specificity in the plans,

13 “(2) to require on-site evaluation of the implemen-
14 tation of plans dealing with deficiencies relating to pa-
15 tient care, and

16 “(3) to emphasize the need for correction to pro-
17 vide for permanent compliance with the standards.

18 “(g) The Secretary may grant a waiver of the require-
19 ments of subsection (d)(1)(B) if a State demonstrates to the
20 satisfaction of the Secretary that—

21 “(1) an alternative method of organizing certifica-
22 tion survey teams will improve the quality and effec-
23 tiveness of such teams, or

24 “(2) despite diligent efforts the State was unable
25 to meet such requirements.”.

1 (d) *REIMBURSEMENT OF STATES FOR SURVEY*
2 *COSTS.*—Subsection (b) of section 1864 of such Act is
3 amended by adding at the end the following new sentence:
4 “Payments under this subsection shall include full reim-
5 bursement for any reasonable State expenditures associated
6 with carrying out the activities described in subsection (d)
7 that are in excess of the amounts the State would have ex-
8 pended carrying out activities under this section as in effect
9 on the day before the date of the enactment of the Medicare
10 and Medicaid Patient and Program Protection Act of
11 1986.”.

12 (e) *EFFECTIVE DATE.*—

13 (1) *Except as provided in paragraphs (2) and (3),*
14 *the amendments made by this section shall become ef-*
15 *fective October 1, 1986.*

16 (2) *The amendment made by subsection (d) shall*
17 *be effective for the period beginning October 1, 1986,*
18 *and ending September 30, 1991.*

19 (3) *In the case of a State plan for medical assist-*
20 *ance under title XIX of the Social Security Act which*
21 *the Secretary of Health and Human Services deter-*
22 *mines requires State legislation in order for the plan to*
23 *meet the additional requirements imposed by the*
24 *amendments made by this section, the State plan shall*
25 *not be regarded as failing to comply with the require-*

1 *ments of such title solely on the basis of its failure to*
 2 *meet the additional requirement before the first day of*
 3 *the first calendar quarter beginning after the close of*
 4 *the first regular session of the State legislature that*
 5 *begins after the date of the enactment of this Act.*

6 ***Subtitle D—Other Provisions***

7 ***SEC. 261. MATERNAL AND CHILD HEALTH SERVICES BLOCK***
 8 ***GRANT.***

9 *(a) AUTHORIZATION OF APPROPRIATIONS.—Section*
 10 *501(a) of the Social Security Act (42 U.S.C. 701(a)) is*
 11 *amended by striking “fiscal year 1984” and inserting in lieu*
 12 *thereof “fiscal years 1984, 1985, and 1986, and*
 13 *\$553,000,000 for fiscal year 1987”.*

14 *(b) ALLOTMENT OF ADDITIONAL APPROPRIATIONS.—*
 15 *Section 502 of such Act (42 U.S.C. 702) is amended—*

16 *(1) in subsection (a)(1) by striking “amount ap-*
 17 *propriated under section 501(a)” and inserting in lieu*
 18 *thereof “amounts appropriated under section 501(a) for*
 19 *a fiscal year that are not in excess of \$478,000,000”,*

20 *(2) in subsection (b) by inserting “that are not in*
 21 *excess of \$478,000,000” after “fiscal year” the first*
 22 *place it appears, and*

23 *(3) by adding at the end the following new sub-*
 24 *section:*

1 “(c)(1)(A) *Of the amounts appropriated for a fiscal year*
2 *in excess of \$478,000,000, an amount equal to 33 1/3 per-*
3 *cent shall be retained and allotted in the same manner as the*
4 *amounts retained and allotted under subsections (a) and (b).*

5 “(B) *The amounts retained by the Secretary under this*
6 *paragraph shall be used for the purpose of carrying out*
7 *(through grants, contracts, or otherwise) special projects of*
8 *regional or national significance, training, and research to*
9 *promote access to primary health services for children and*
10 *community-based service networks and case management for*
11 *children with special health care needs.*

12 “(C) *The amounts allotted to the States under this*
13 *paragraph shall be used to develop primary health services*
14 *demonstration programs and projects for children and to pro-*
15 *mote the development of community-based service networks*
16 *and case management for children with special health care*
17 *needs.*

18 “(D) *For purposes of this paragraph—*

19 “(i) *the term ‘primary health service’ includes—*

20 “(I) *any assessment, diagnosis, or treatment*
21 *service provided on an outpatient basis that is de-*
22 *signed to promote the health, to prevent the devel-*
23 *opment of disease or disability, or to treat an ill-*
24 *ness or other health condition, of a child, and*

1 “(II) any service designed to promote the
2 access of children to high quality, continuous, and
3 comprehensive primary health services, including
4 case management;

5 “(ii) the term ‘community-based service network’
6 means a network of coordinated, high-quality services
7 for children with special health care needs that is locat-
8 ed in or near the home communities of such children in
9 order to improve the health status, functioning, and
10 well being of such children;

11 “(iii) the term ‘case management services’ means
12 services to promote the effective and efficient organiza-
13 tion and utilization of resources to assure access to nec-
14 essary comprehensive services for children and their
15 families; and

16 “(iv) the term ‘comprehensive services for children
17 with special health care needs includes early identifica-
18 tion and intervention services, diagnostic and evalua-
19 tion services, treatment services, rehabilitation services,
20 family support services, and special education services.

21 “(2) The remainder of the amounts appropriated for a
22 fiscal year in excess of \$478,000,000 shall be retained and
23 allotted in the same manner and for the same purposes as the
24 amounts retained and allotted under subsections (a) and
25 (b).”.

1 **SEC. 262. NATIONAL MEDICAL EXPENDITURE SURVEY.**

2 (a) *IN GENERAL.*—Commencing in fiscal year 1987,
3 and commencing every tenth fiscal year thereafter, the Secre-
4 tary, through the National Center for Health Services Re-
5 search and Health Care Technology Assessment, shall con-
6 duct a survey to evaluate the impact, during the ten-fiscal-
7 year period immediately preceding the fiscal year in which
8 the survey is commenced, of expenditures for health care
9 under programs carried out by the Health Care Financing
10 Administration and other entities of the Department of
11 Health and Human Services on the costs, financing, and uti-
12 lization of health care services in the United States. The
13 survey shall include information on such impact for all
14 groups within the United States population, including indi-
15 viduals receiving long-term care services.

16 (b) *FUNDING.*—

17 (1) *To carry out this section, there shall be made*
18 *available—*

19 (A) *for fiscal year 1987, \$16,000,000,*

20 (B) *for fiscal year 1988, \$12,000,000, and*

21 (C) *for fiscal year 1989, \$6,000,000,*

22 *from amounts available for such fiscal year under sec-*
23 *tion 2113 of the Public Health Service Act.*

24 (2) *The provisions of paragraph (1) shall not be*
25 *construed as reducing or affecting any amount re-*
26 *quired, under any other provision of the Public Health*

1 *Service Act, to be made available for any fiscal year*
 2 *from amounts available for such fiscal year under sec-*
 3 *tion 2113 of such Act.*

4 **SEC. 263. COLLECTION OF DATA RELATING TO ADOPTION AND**
 5 **FOSTER CARE.**

6 *Part E of title IV of the Social Security Act is amend-*
 7 *ed by adding at the end thereof the following new section:*

8 **“COLLECTION OF DATA RELATING TO ADOPTION AND**
 9 **FOSTER CARE**

10 **“SEC. 478. (a)(1)** *Not later than 60 days after the date*
 11 *of the enactment of this subsection, the Secretary shall estab-*
 12 *lish an Advisory Committee on Adoption and Foster Care*
 13 *Information (in this section referred to as the ‘Advisory*
 14 *Committee’) to study the various methods of establishing, ad-*
 15 *ministering, and financing a system for the collection of data*
 16 *with respect to adoption and foster care in the United States.*

17 **“(2)** *The study required by paragraph (1) shall—*

18 **“(A)** *identify the types of data necessary to—*

19 **“(i)** *assess (on a continuing basis) the inci-*
 20 *dence, characteristics, and status of adoption and*
 21 *foster care in the United States, and*

22 **“(ii)** *develop appropriate national policies*
 23 *with respect to adoption and foster care;*

24 **“(B)** *evaluate the feasibility and appropriateness*
 25 *of collecting data with respect to privately arranged*
 26 *adoptions;*

1 “(C) assess the validity of various methods of col-
2 lecting data with respect to adoption and foster care;
3 and

4 “(D) evaluate the financial and administrative
5 impact of implementing each such method.

6 “(3) Not later than December 31, 1987, the Advisory
7 Committee shall submit to the Secretary and the Congress a
8 report setting forth the results of the study required by para-
9 graph (1) and evaluating and making recommendations with
10 respect to the various methods of establishing, administering,
11 and financing a system for the collection of data with respect
12 to adoption and foster care in the United States.

13 “(4)(A) Subject to subparagraph (B), the membership
14 and organization of the Advisory Committee shall be deter-
15 mined by the Secretary.

16 “(B) The membership of the Advisory Committee shall
17 include representatives of—

18 “(i) private, nonprofit organizations with an in-
19 terest in child welfare,

20 “(ii) organizations representing State and local
21 governmental agencies with responsibility for foster
22 care and adoption services,

23 “(iii) organizations representing State and local
24 governmental agencies with responsibility for the collec-
25 tion of health and social statistics,

1 “(iv) organizations representing State and local
2 judicial bodies with jurisdiction over family law,

3 “(v) Federal agencies responsible for the collection
4 of health and social statistics, and

5 “(vi) organizations and agencies involved with
6 privately arranged or international adoptions.

7 “(5) After the date of the submission of the report
8 required by paragraph (3), the Advisory Committee
9 shall cease to exist.

10 “(b)(1)(A) Not later than January 1, 1988, the Secre-
11 tary shall submit to the Congress a report that—

12 “(i) proposes a method of establishing, administer-
13 ing, and financing a system for the collection of data
14 relating to adoption and foster care in the United
15 States,

16 “(ii) evaluates the feasibility and appropriateness
17 of collecting data with respect to privately arranged
18 adoptions, and

19 “(iii) evaluates the impact of the system proposed
20 under clause (i) on the agencies with responsibility for
21 implementing it.

22 “(B) The report required by subparagraph (A) shall—

23 “(i) specify any changes in law that will be neces-
24 sary to implement the system proposed under subpara-
25 graph (A)(i), and

1 “(ii) describe the type of system that will be im-
2 plemented under paragraph (2) in the absence of such
3 changes.

4 “(2) Not later than July 1, 1988, the Secretary shall
5 promulgate final regulations providing for the implementa-
6 tion of—

7 “(A) the system proposed under paragraph
8 (1)(A)(i), or

9 “(B) if the changes in law specified pursuant to
10 paragraph (1)(B)(i) have not been enacted, the system
11 described in paragraph (1)(B)(ii).

12 Such regulations shall provide for the full implementation of
13 the system not later than October 1, 1991.

14 “(c) Any data collection system developed and imple-
15 mented under this section shall—

16 “(1) avoid unnecessary diversion of resources
17 from agencies responsible for adoption and foster care;

18 “(2) assure that any data that is collected is reli-
19 able and consistent over time and among jurisdictions
20 through the use of uniform definitions and methodolo-
21 gies;

22 “(3) provide comprehensive information with re-
23 spect to—

1 “(A) the demographic characteristics of adop-
2 tive and foster children and their biological and
3 adoptive or foster parents,

4 “(B) the status of the foster care population
5 (including the number of children in foster care,
6 length of placement, type of placement, availabil-
7 ity for adoption, and goals for ending or continu-
8 ing foster care),

9 “(C) the number and characteristics of—

10 “(i) children placed in or removed from
11 foster care, and

12 “(ii) children adopted or with respect to
13 whom adoptions have been terminated, and

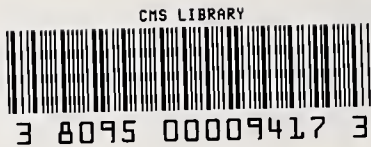
14 “(D) the extent and nature of assistance pro-
15 vided by Federal, State, and local adoption and
16 foster care programs and the characteristics of the
17 children with respect to whom such assistance is
18 provided; and

19 “(4) utilize appropriate requirements and incen-
20 tives to ensure that the system functions reliably
21 throughout the United States.”.

Amend the title so as to read: “An Act to amend the Social Security Act to protect beneficiaries under the health care programs of that Act from unfit health care practition-

ers, to improve the antifraud provisions of that Act, and for other purposes.”.

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Calendar No. 1066

99TH CONGRESS
2D SESSION
H. R. 1868

[Report No. 99-520]

AN ACT

To amend the Social Security Act to protect beneficiaries under the health care programs of that Act from unfit health care practitioners, and otherwise to improve the antifraud provisions of that Act.

OCTOBER 2 (legislative day, SEPTEMBER 24), 1986

Reported with an amendment and an amendment to the title